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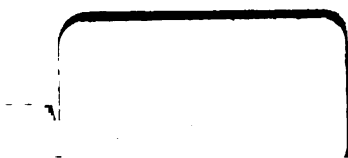
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The American Political Science Review

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No. 1

LAW AND ORGANIZATION

PRESIDENTIAL ADDRESS THE ELEVENTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

JOHN BASSETT MOORE

Columbia University

Webster, as a prelude to his reply to Hayne, asked for the reading of the resolution before the Senate, in order that the mind of his hearers might be led back to the original and perhaps forgotten subject of the debate. Today we may well imitate his example, by recurring to fundamental principles. For five months we have stood in the presence of one of the most appalling wars in history, appalling not only because of its magnitude and destructiveness but also because of its frustration of hopes widely cherished that the progress of civilization had rendered an armed conflict between the leading powers of the world morally impossible. As a result we have since the outbreak of the great conflict been tossing about on the stormy sea of controversy, distrustful of our charts and guides, and assailed on every hand with cries of doubt and despair. We have been told that there is no such thing as international law; that, even if its existence be admitted, it is at most nothing but what superior force for the time being ordains; that international understandings, even when embodied in treaties, are practically worth-

less, being obligatory only so long as they may be conceived to subserve the interests or necessities of the moment; that the only security for the observance of international rules, general or conventional, is force, and that in force we must in the last analysis find our sole reliance.

Thoughts such as these, to which superheated minds have been known to give expression even in time of peace, are the natural product of times like those through which we are now passing. Students of law are familiar with the maxim, bequeathed to us by Cicero, that in the midst of arms the laws are silent—*inter arma silent leges*. This maxim primarily refers to municipal rather than to international law, but it may be applied to either. Its meaning and scope may easily be misconceived. It signifies in effect that, when a contest by force prevails, the ordinary rules and methods of administration become inadequate and give way to measures dictated by public necessity. The system by which the ordinary administration is superseded is called martial law. Under this system the ordinary guarantees of individual liberty are suspended; but, although this is the case, we should stray far from the truth if we were to accept in a literal or popular sense the statement that martial law is “the will of the general who commands the army.” The true meaning of this phrase was expounded by the Duke of Wellington, the great commander who uttered it. The general in command, although he possessed supreme power, was, said the Duke of Wellington, “bound to lay down distinctly the rules and regulations and limits according to which his will was to be carried out.” The Duke declared that he had in another country carried on martial law, and in so doing “had governed a large proportion of the population of the country by his own will.” But then, he asked, what did he do? and his answer was, “he declared that the country should be governed according to its own national laws, and he carried into execution that will. He governed the country strictly by the laws of the country; and he governed it with such moderation, he must say, that political servants and judges who at first had fled or had been expelled, afterwards consented to act under his direction. The judges sat in the courts

of law, conducting their judicial business and administering the law under his direction."¹

It is thus evident that when, in discussing martial law, we refer to the "will" of the commanding general, we refer to regulated and not to arbitrary action, so that even in the theatre of war, where the military commander is supreme, the idea of law does not disappear.

The idea of law is in reality the very foundation of the entire theory of military occupation. The obedience which the inhabitants of the occupied territory owe to the military commander is merely an expression of this principle. While the inhabitants owe obedience, it is equally true that the military commander is on the other hand bound to render them protection, and is not permitted to treat them altogether as enemies so long as they observe the rules and regulations established for their government. Such is the principle laid down by writers on international law and by military commanders who have respected the established rules of international intercourse.

But it may be asked, what is international law? What is its essential nature; and, particularly, what is its position as compared with municipal law, and what is its sanction?

It may at the outset be admitted that a vast deal of time has been wasted in controversy over the question whether international law is law at all. These controversies, if minutely examined, will usually be found to have proceeded from one of two causes, namely, either (1) that the disputants have approached the subject from the point of view of preconceived definitions which were incapable of reconciliation, or (2) that, if they have agreed upon a definition, they have differed as to its application.

Probably no definition ever had a more pronounced effect on legal thinking than had the definition of law, given by Austin in his work on *Jurisprudence*, upon the legal mind of England and the United States. According to Austin, "a law, in the literal and proper sense of the word," is "a rule laid down for

¹ Speech of the Duke of Wellington, Debate on Affairs in Ceylon, House of Lords, April 1, 1851, Hansard, 3d series, CXV. 880.

the guidance of an intelligent being by an intelligent being having power over him." This definition, according to its author, embraced "laws set by God to men" and "law as set by men to men." Of the latter, some were "established by political superiors acting as such," and constituted "positive law"—the appropriate matter of jurisprudence. "Closely analogous to human laws," but "improperly termed laws," were, he declared, "rules set and enforced merely by the opinion of an intermediate body of men," such as "the law of honor," or the "laws of fashion." Rules of this species constituted, he said, much of what was commonly termed "International Law;" and he placed them all in the category, not of law, but of "positive morality." Among the essentials of a law properly so called, he specified a "command" and a "sanction," the latter being the evil which would probably be incurred in case a command should be disobeyed.

Without commenting upon a terminology that smacks of the medieval, *jure divino* conception of law as the product of superior power rather than of delegated authority, a moment's reflection suffices to show that Austin's so-called definition is at most merely a description of municipal law, and even for that purpose is not sufficiently comprehensive, since it would, for instance, exclude a large part of constitutional law, much of which, like a considerable part of international law, is not enforced by courts by means of specific penalties. Nor would it be difficult to show that it is in its conceptions historically faulty. Sir Henry Maine, in his volume on *International Law*, dismisses Austin's criticisms on that system as "very interesting and quite innocuous," and rather scouts the supposition "that Austin had intended to diminish, and had succeeded in diminishing, the dignity or imperative force of international law." I am altogether unable to accept this cheerful view. I think it may easily be shown that at one time Austin's relegation of international law to the sphere of morality had a pronounced effect even upon legal decisions in England, as in the case of the *Franconia*.²

² *Queen vs. Keyn* (1876), 13 Cox C. C. 403; 2 Ex. Div. 63.

Acting upon the assumption that Austin's description of municipal law was to be received as the ultimate test by which the admission of rules of conduct to the category of "law" was to be determined, writers have now and then made vain attempts to bring international law within his definition, and in order to prove that such inclusion was possible, have invoked the principle that international law is "a part of the law of the land." This principle has, as is well known, been enunciated and applied in a number of cases by the English courts, though with less precision and confidence since Austin's day than before. In the decisions of the American courts it may, I think, be said fortunately to have escaped an eclipse. But, even if we were to assume that it had nowhere been questioned, it must be admitted that the principle that the "law of nations," or international law, is a part of the law of the land, does not go to the root of the difficulty. Even though a court may accept the doctrine in good faith, its interpretation of international law may, by reason of national bias or local influence, prove to be contrary to the general sense, or, still worse, the court may be compelled by legislative direction to apply a rule flagrantly inconsistent with what is generally understood to be the accepted principle. In such a contingency, the question necessarily arises as to what is to be done to secure the application and enforcement of that principle.

It is just here that we disclose the practical difference between international law and municipal law. Speaking comprehensively, we may say that a law is an obligatory rule of action. In the course of history, men, acting in certain ways or through certain forms, have worked out and have come to accept certain rules for the government of their conduct. In a general sense all such rules may be called laws; but with a view to preserve that freedom of action which is essential to self-development, it has been deemed expedient to give to only a part of such rules the force of positive obligation. The observance of the rest of them is left to the choice of the individual, who may be deterred from disregarding them by a good disposition, or by an apprehension of self-injury or of moral censure.

To the rules lying within the sphere in which observance is

deemed to be essential to the general welfare and is therefore admitted to be obligatory, we give the name of law. These rules we undertake by one means or another to enforce, and measures are adopted for the purpose of making their observance compulsory.

For this reason, the world has come to regard the rules governing the intercourse of nations as constituting a system of law, for the maintenance of which even the use of coercion is justified, and this system is, as students know, much older than is popularly supposed. Phillipson, in his recent work entitled *The International Law and Custom of Ancient Greece and Rome*, has given a comprehensive and systematic survey of the international practices of those great commonwealths, with a special view to demonstrate "their respective acceptance of and insistence on juridical principles, and their application of a regularized procedure and legal methods to international relationships." The popular supposition that international law, as we now know it, originated with Grotius, whose great work *De Jure Belli ac Pacis* was published in 1625, is due to the circumstances that his treatise was exceptionally clear, comprehensive and systematic, and for that reason formed a landmark in the development of the science; but if one will take the trouble, as few now do, to examine the pages of Grotius, it will be found not only that he drew his inspiration and his opinions largely from earlier times and writers, but also that some of his fundamental doctrines are now quite obsolete. Sir John Macdonell, indeed, in his introductory note to Phillipson's work, declares that the "system of international law in the ancient world" is "in some respects much more akin to that of today than international law as it was in the time of Grotius. In the number and variety of autonomous states," says Sir John; "in the many different forms of their constitutions; in the existence of autonomous democratic states; in the conception of the state itself, wholly different from the feudal or patrimonial conception; in the number and variety of dependent communities, in the existence of federations; in the unstable balance of power; in the relations of the mother countries to autonomous colonies; in the multitude of treaties

dealing with many subjects besides peace and war; in the developed use of arbitration, as a mode of settling differences; in the practice as to passports,—in these and many other matters there is more likeness between the international law in ancient Greece and that of today than there is between the latter and international law as described in *De Jure Belli ac Pacis*.”

In the development of international law, we find that the same forces have operated and to a certain extent the same methods have prevailed as in municipal law. Till a comparatively recent day international law developed chiefly through the gradual evolution of opinion and practice; and, just as in the case of municipal law, the prevailing opinion and practice would from time to time be embodied in some notable declaration or decision, which would be received as the authoritative formulation of accepted usage. The gradual evolution of international law was exemplified with the utmost precision and force by the Supreme Court of the United States in the case of the Spanish fishing smacks, in 1900.³ The particular point decided was that coast fishing vessels, unarmed and honestly pursuing the peaceful calling of catching and bringing in fresh fish, were exempt from capture in time of war. In opposition to this view there was cited by counsel an opinion of Lord Stowell to the effect that the exemption was “a rule of comity only, and not of legal decision.” The Supreme Court, however, declared that the period of a hundred years that had elapsed since Lord Stowell’s opinion was uttered was “amply sufficient to have enabled what originally may have rested in custom or comity, courtesy or concession, to grow, by the general assent of civilized nations, into a settled rule of international law.”

But, just as, in the case of municipal law, the statutory element has increased at the expense of the customary, so, in international law, there has been an increasing tendency to introduce modifications and improvements by acts in their nature legislative. A great advance towards assuring the free navigation of international streams of water was made by the Vienna Congress Treaty of

³ *The Paquete Habana* (1900), 175 U. S. 677.

June 9, 1815, by which the contracting parties agreed that rivers which separated or traversed two or more states should, along their whole navigable course, be, in respect of commerce, entirely free to everyone, subject only to regulations of police. This principle, although applied primarily to the Rhine, was expressly extended to the Neckar, the Mayne, the Moselle, the Meuse, and the Scheldt. With a limitation of the right of free navigation in some instances to the citizens or subjects of the riparian powers, similar stipulations may be found in treaties relating to the rivers and canals of the ancient kingdom of Poland; to the Elbe, Po, Pruth, Douro, Danube, and other rivers in Europe; and to the rivers Amazon, Paraguay, Uruguay, St. Lawrence, Yukon, Porcupine, and Stikine, in America.

By the same Congress, an important contribution to international law was made in the form of rules to regulate the rank and precedence of diplomatic agents. These rules, slightly modified by the Congress of Aix-la-Chapelle of 1818, were accepted by all the powers which then composed the international circle, and resulted in the regulation of a subject which had constantly given rise to disputes.

Yet more remarkable as an act of legislative aspect was the Declaration on Maritime Law, made by the Congress of Paris of 1856. This Declaration embraced four rules:

"1. Privateering is and remains abolished.

"2. A neutral flag covers an enemy's goods, with the exception of contrabrand of war.

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.

"4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

The fourth rule may be considered as merely declaratory of international law, and so also may the third rule. But by the first two rules it was proposed to give the character and force of law to principles which had previously been obligatory only when they were made so by treaty; and to this end the signatories announced their purpose to invite the adhesion of other powers

with a view "to establish a uniform rule." The powers invited to adhere embraced practically all those within the sphere of international law; and, with the exception of the United States, Spain and Mexico, they accepted the Declaration in its entirety. Spain gave her adhesion several years ago, but the United States has not as yet done so. Their original objection to adhering was based upon the naked inhibition of privateering, an objection which would have lost much of its force if it had been foreseen that merchant vessels might be incorporated into the navy without violating either the letter or the spirit of the declaration. All the powers, however, approved the second rule, that free ships make free goods, and it has since been regarded as a principle of international law. It was expressly so proclaimed both by the United States and by Spain at the outbreak of the war between them in 1898.

Since 1860 numerous attempts have been made, by means of international conferences, to legislate on the modes of conducting warfare. The Geneva Convention of August 22, 1864, for the amelioration of the condition of the wounded in armies in the field, commonly called the Red Cross convention, is known to all. The observance of the provisions of this convention is considered a test of civilization. Agreements such as the Declaration of St. Petersburg of 1868, which was framed by an international military commission, have been made as to the nature of the weapons that may be used in war, and as to the treatment of prisoners of war. Nor should we omit to mention the project of Declaration concerning the Laws of War on Land, formulated by the Brussels Conference of 1874. Although the powers represented in the conference afterwards failed to make the declaration binding, it forms the basis of the "Manual" of the Institute of International Law of 1880, of the plan adopted by the Spanish-Portuguese-Latin-American Military Congress at Madrid in 1892, and also of the Hague Convention relating to the Laws and Usages of War on Land. Unfortunately, it cannot be said that the Hague conventions relating to the conduct of war on land and sea have, as to the conflict now in progress in Europe, the force of international compacts. Each of

the conventions contains a clause to the effect that its provisions "do not apply except between contracting parties, and then only if all the belligerents are parties to the conventions." Serbia, one of the belligerents in the pending war, has not ratified any of the conventions; and yet other belligerents have not ratified some of them. The rules they lay down are therefore binding upon the belligerents only so far as they are declaratory of existing international law.

But, let us assume that international rules of conduct, founded either on usage or on treaties, are disregarded. What then is to be done? It is just here, as I have intimated, that we find the practical difference between international law and municipal law, and this difference relates to organization.

Before proceeding to discuss the subject of organization, I desire to comment upon certain impressions, which I conceive to be erroneous, in regard to international law and its observance. It is often hastily assumed (1) that the rules of international law are, as contrasted with the rules of municipal law, exceedingly indeterminate, and (2) that, even when they are ascertainable, they are little heeded. Both these assumptions are for the most part unfounded. The fact cannot be denied that there exists in the sphere of international law a considerable amount of uncertainty as to what the law actually is; but, that such uncertainty is not unknown in the domain of municipal law is amply demonstrated by the ever accelerating accumulation of judicial decisions and the diverse, discordant, conflicting views which they so often exhibit. Even our legislative enactments do not uniformly afford relief. It took, for instance, nearly twenty years, with the aid of our judicial authorities, to ascertain the meaning of the so-called Sherman Law, and when the Supreme Court at length applied to it "the rule of reason," there were those who felt so much or so little regard for the wisdom of Congress as to assert that the effect of the statute had been misinterpreted. And even yet its bearing upon some of our most important companies remains to be determined.

At the present moment there are important forms of contract, of almost world-wide use, the sense of whose eventual interpretation

by the courts on capital points is a matter of pure conjecture, not because of any difficulty as to facts or even as to the application of principles to facts, but because of absolute uncertainty as to the rules of municipal law. How can one predict what the decision of a common law court will be on a point of law not before precisely determined, when the court may "on full consideration" overturn a previously established rule, as happened, for instance, when it was held that insurance on enemy property was illegal and void?

In respect of actual observance, I venture to say that international law is on the whole as well observed as municipal law. Perhaps one would not go too far in saying that it is better observed, at any rate in time of peace. In time of war, when a contest by force exists, it is needless to repeat that the application of law, whether municipal or international, becomes more or less uncertain, and that, as turmoil and excitement grow, the uncertainty increases. In time of peace, however, the regard which nations are accustomed to feel for their reputation and dignity strongly influences them, perhaps quite as much as does the dread of retaliation, to respect the rules by which their intercourse is confessedly regulated. If one would only reflect upon the smallness of the number of international claims that arise in times of internal and external peace, he would not be disposed to question the correctness of this statement. It is in seasons of disturbance, domestic or international, that complaints and claims spring up.

Assuming, however, that international law has been disregarded, where is a remedy to be sought? If municipal law is violated, we apply to the administrative officials, or to the courts, as a means of securing redress. We appeal, in other words, to constituted authorities, who are empowered to do justice; and, if law is lacking, we may go to the legislature to supply the defect, at least for the future. In other words, we have within the state an organization for the enforcement of justice according to law.

In the international sphere, under similar conditions, we proceed in the first instance amicably, through diplomatic officials, who are the constituted authorities for this purpose. We negotiate

and in case an agreement should not be reached, we may accept the good offices or the mediation of a third power; or we may submit the question to judicial settlement, by means of arbitration. These are all amicable modes of redress, which international organization in its present state provides. If they do not succeed, it is laid down that we may try inamicable methods, ranging all the way from retorsion or retaliation, embargo, commercial non-intercourse, severance of diplomatic relations, and display of force, to reprisals, which are acts of war, and to war itself, which is in its physical aspect merely general reprisals. Nevertheless, if actual force be employed, there is always the danger of forcible resistance, ending in war; and in that event we may have the incongruous result that the aggressor, without submitting to the examination of any tribunal the justice of his cause, may, in the exercise of the "rights of war," conquer or destroy the injured power which he has by his own wrong driven to become his adversary.

This principle, which I conceive to be the capital defect of international law at the present day, is perhaps to be explained as a survival of the superstitions that preserved in municipal law for so many centuries the process of trial by battle. However this may be, it is flagrantly at variance with all conceptions of human right, and can be effectually got rid of only through further organization. It is in this respect, as I have intimated, that international law differs from municipal law—not in its essence or its obligation, but in the method of its declaration and administration. Within the state we have an organization for the making, declaration and enforcement of law, whereas, as between nations, we are obliged to a great extent to rely upon their voluntary concurrence or coöperation. In other words, we lack in the international sphere that organization which gives to the administration of law within the state a certain security. This defect it is the business of nations to supply by forming among themselves an appropriate organization.

The essential features of such an organization would be somewhat as follows:

1. It would set law above violence: (1) By providing suitable

and efficacious means and agencies for the enforcement of law; and (2) by making the use of force illegal, except (a) in support of a duly ascertained legal right, or (b) in self-defense.

The first effect of such an organization would be to give an additional sanction to the principle of the equality of independent states before the law. "No principle of general law," said Chief Justice Marshall, "is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights."⁴ "Power or weakness," said the great Swiss publicist, Vattel, "does not in this respect produce any difference." And, incidentally, in proportion as this principle was maintained, the monstrous supposition that power is the measure of right would tend to disappear, and the claims of predatory conquest would become less and less capable of realization.

2. It would provide a more efficient means than now exists for the making and declaration of law.

We have adverted to the development of international law through the gradual evolution of opinion and practice, and also to attempts made during the past hundred years to establish rules by acts in their nature legislative. The chief obstacle to the efficacy of the second method is the requirement of unanimity. In the declaration of law on the strength of usage, it has never been supposed to be necessary to show that each particular nation had affirmatively adopted it. It appearing that the usage is general, all nations that profess to be law-governed are assumed at least tacitly to have accepted it. But, when we come to legislation, each nation must, it is held, give its assent, in order that it may be bound. Undoubtedly it would be going too far in the present state of things to propose a mere majority rule. But it is altogether desirable that a rule should be adopted whereby it may no longer be possible for a single state to stand in the way of international legislation. The adoption of such a rule could not be regarded as impairing in a proper sense the principle of the equality of nations. Nations have responsibilities as well as rights.

⁴ *The Antelope*, 10 Wheaton, 66, 122.

3. It would provide more fully than has heretofore been done for the investigation and determination of disputes by means of tribunals, possessing advisory or judicial powers, as the case might be.

The neglect of such processes has been the great defect of the European Concert. I am not among the number of those who hold towards that organization an attitude wholly accusatory. Its efforts have no doubt in the main been sincerely directed to the preservation of peace. But, its proceedings would often have been less open to suspicion and would have tended to produce more lasting results, if considerations of fact and of law had played a larger part in its deliberations.

Such I conceive to be the essentials of an organization which would place international law on substantially the same footing as municipal law, as regards its making, declaration and enforcement. But, the fact is not to be lost sight of that, in the present state of human development, there is no absolute security for the uninterrupted maintenance of law, national or international, or for the continuous preservation of peace. We are often told that in the last analysis the ultimate sanction of law is "public opinion," by which is meant, we may assume, not so much the intelligent conclusions reached by processes of reasoning, as the general state of mind which, frequently dominated by sentiment, determines the attitude of a people or of the world. Logically speaking, whether the popular attitude be dictated by reason or by sentiment, forcible opposition to law has no excuse where universal suffrage practically prevails, as it does in the United States. In so saying, I of course do not intend to enter upon the discussion of the vexed question of woman suffrage, which I may follow high authority in leaving to the determination of the several States. Eliminating this, however, as a cause of war, I repeat that, if the predominant opinion should always rightfully prevail, then, where ballots have been substituted for bayonets forcible opposition to law and its administration would seem to be without justification. Nevertheless, we know that, in respect of civil strife, the United States has not escaped the misfortunes to which other nations, in which the suffrage was less extended,

have now and then been subject. This fact may be ascribed (1) to the circumstance that there is a large part of human activities, especially of a competitive kind, not yet brought within the sphere of legal regulation and (2) to the propensity of men acting in the mass to attain their ends by violence. This tendency no doubt should diminish in proportion as the suffrage is made free. In the United States, with its immense extent of territory and its great population, we have before us the spectacle of long-continued internal peace with a standing military force that would scarcely form the nucleus of an army sufficient for any considerable emergency. Nevertheless, it would be rash to assume that we are permanently immune from the danger of domestic strife. Without going into a discussion of the causes, we have lately witnessed in one of our States a condition of things resembling war, while at the same time an armed conflict was threatened in a part of the British dominions, in which civil war had come to be regarded as almost unthinkable.

Occasional conditions such as these should by no means lessen our estimate of the importance of organization for the maintenance of law, either international or internal. They should, on the contrary, serve to emphasize not only the necessity of organization, but also the importance of extending its scope and increasing its efficiency. Meanwhile, they also indicate the futility of relying upon any single device, such as a court, as an all-sufficient means of preserving peace and order. Experience has demonstrated that, even within comparatively small areas, local conditions must be consulted, in order that the administration of law may not produce discomfort and discontent; and, as long as discontent and ambition continue to play in the affairs of the world a conspicuous part, so long will it be necessary to be prepared either to satisfy or to resist them.

THE CAUSES OF THE GREAT WAR

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In 1806 Prussia engaged in war with Napoleon. The swiftest of his triumphs followed. In two months the Prussians had surrendered their fortresses, and seen annihilated the greatness which Europe had failed to crush in the time of Frederick the Great. A period of humiliation followed, and for some years the people lived under the conqueror's yoke.

Deliverance came when Napoleon, stretching too far his power, and arousing the spirit of peoples, was defeated by Europe in arms. The liberation which alone Prussia could not have accomplished, was yet wrought partly by herself, for deliverance was preceded by regeneration in which her military system was fundamentally reformed. But it may be that what remained after all as the principal heritage from these years was the abiding sense that Prussia had suffered from being weak, and that only through military strength could there be safety in the future.

The expansion and greatness of Prussia left unfulfilled the old idea of a united Germany. Through the middle ages and down to this time Germany had remained disunited, and weak and despised because of it. The smallest states had now disappeared, but still there were larger ones, grouped under Austria in vague and shadowy empire. And the history of Germany in the half century which followed the downfall of Napoleon is a record of yearning and striving on the part of people filled with distant memories, and noble aspiration after that strength and union which had come to their neighbors and yet been denied to themselves.

Gradually it was seen that Austria would not or could not do the work, and presently that Prussia could do it. What fol-

lowed has often been told: Denmark was despoiled, Austria defeated, and then a great confederation formed, and finally the old enemy France struck down, her eastern provinces rent away, and in the midst of mighty fervor a real German Empire founded. So splendid was this work of Bismarck that had his methods been different he might have stood as the greatest man of his century.

This era is important not only for what it ended and began, but also for the methods used in it. Bismarck was not worse than most of the diplomats who preceded or followed him, but the immensity of his achievement and the splendor of his success have cast into bold relief the evil and the good that was in him. Frequently his instruments were cunning, force, and fraud. With him means were justified by end. A great task was to be achieved, as he could, so long as it was achieved. Ordinary justice and moral considerations had with him, as with Napoleon, small place. There was pity for the weak and mercy to the fallen only as such things were politic. He left behind him a wondrous glamour, but he left also fear and hatred and desire for revenge. And as by force and violence he had accomplished what he had done, so he knew that only by force could his work be maintained.

Bismarck had isolated his enemies and then struck them down. From Austria he had taken little, and so he was able to create friendship based on identity of interests, but from France he had taken much, and France must remain lonely and weak, powerless to take vengeance and undo what Germans had achieved. In this he was largely successful. Before France had recovered from her wounds, Austria, Germany and Russia had drawn together. Italy was poor, and with her own unity just obtained; England remained as before in splendid isolation.

In France the years after 1871 are the saddest since the Hundred Years War, but they are at the same time of imperishable glory. The eastern frontier was now so near to Paris as to make it seem indefensible. Crushed by an enormous indemnity and also by the sense of irreparable disaster, it seemed that France had fallen on days too evil for cure. But with immortal spirit

her people at once began the task of regeneration. In a few years the frontier was re-fortified, and the new military system copied from the enemy made her seem more formidable than ever; though this strength was somewhat counterbalanced by the weakness inseparable from the beginnings of democratic government.

So strong did France become and so surprising was her recovery that Germany became alarmed, and seriously considered striking her down before preparations had gone further, and so completely that she could never be dangerous again. This was not done, but France remained filled with burning desire for revenge and hope of winning back some day the provinces which she had lost. It seemed, however, that the opportunity was destined never to come. At first she was not merely weak but alone. Afterwards when the balance of power had been redressed a different spirit had come at the same time that changes of birth-rate had produced such disparity of numbers as to make an attack by France upon Germany unthinkable.

The appearance of the German Empire was a rude disturbance of the old political equilibrium in Europe. Bismarck sought readjustment by a new grouping of nations about Germany. Austria, who soon came to be dependent upon German support, was firmly attached in alliance. To these two powers Russia had been drawn for a while, but it was soon apparent that the question of the Balkans made the interests of Germany's partners irreconcilable. During the Russo-Turkish War she was forced to choose which of her friends she would in the future have, and the support which she gave to Austria made it certain that Russia would soon seek her interests elsewhere.

Gradually in eastern Europe developed a situation like that to the west of the Rhine. On the one side was Russia smarting under indignity from the Teutonic powers; on the other France alone and unrevenged. Memory of old antagonisms kept these two powers apart, but in time common interest proved stronger, and after 1891 the world knew that there was a Dual Alliance. Meanwhile the astute Bismarck seized upon old suspicion and colonial rivalry, played upon Italy's fear of France,

and brought her into a Triple Alliance with Austria and the German Empire. Down to the end of the century and apparently for a few years after, the peace of Europe was maintained, as men believed, by the two armed camps of the Dual Alliance and the Triple Alliance, constantly increasing their armaments and debts, and keeping against each other vigilant watch and ward. On the outskirts of Europe remained England, safe, as it seemed, and aloof.

The first decade of the new century saw immense alteration. Friendships cooled, enemies became friends, and newcomers entered the opposing camps. Of this there were many causes, but most of them may be traced ultimately to the prodigious growth of the German Empire, which is the most striking phenomenon of Europe in recent times.

A nation which was mainly agricultural in 1870 had by 1910 come to be second only to the United States in manufactures and second only to England in shipping. So fast had national riches increased that it was now the wealthiest nation in Europe, having in two generations outstripped both England and France. It was filled with exuberant strength and aggressive energy. The basis of this was method and organization and efficiency, but it was also the increasing population of the empire. In all the changes of this time no single factor was more important.

In 1801 the population of Great Britain was 10,500,000, that of France 27,000,000; in 1911 they had respectively 45,000,000 and barely 40,000,000. In 1816 the territories of the present German Empire contained 24,000,000, but in 1911 this had risen to 66,000,000. In England population had increased rapidly; in France for a long time it had remained stationary; in Germany it had grown amazingly, and was now enlarging by a million souls a year. During the later centuries of the Roman Empire, and all over the world among civilized peoples in the nineteenth century, birth-rate had shown a tendency to fall as material comfort and standard of living were raised. It was the case in the Scandinavian countries, and to some extent in England and the United States; but in France, where conditions tended toward widest diffusion of proprietorship and wealth, this con-

dition had become universal, and after the loss of Alsace and Lorraine, France was left with a smaller population than before. On the other hand there were such countries as Italy and Russia, with relatively low standard of living, and fecundity excessively great; but there was also Germany with expanding industry and increasing wealth, where the birth-rate was tremendously high, and for a long time showed scant prospect of diminution. Thus it was that German statisticians could gloat over their old enemy, and look forward to the day when there would be in Germany twice as many people as in France, and as many as in England and France together.

Here was an old problem which had loomed up in bygone times and been lost in the changes of the past: whether a nation which increases rapidly the number of its people in lands already well filled, does so because of strength and joyous youth, vigor and creative power, and so strides onward to happiness and higher achievement, or whether it represents a lower civilization which in the past has brought strife and destruction; and whether a nation which increases little or merely maintains its numbers, even though it maintains them in intelligence and material happiness, is a tired nation with halting step upon the way of degeneracy and death, or whether it has attained a higher civilization to which the world will advance in the future.

But Germany, like a giant conscious of greatness waxed ever more ambitious and aggressive, and the pressure of numbers, first felt within her own bounds, was soon felt by all her neighbors, and at last by every nation in the world. For where intelligence and efficiency are nearly equal, numbers will usually be decisive. It was the greatness of her population which so long gave to France the leadership of Europe; and now behind admirable organization and thoroughness of method, it was increase of people which gave the German Empire impregnable position across the continent, and let its rulers dream of the hegemony of the world.

In France, where terrible memories lingered, the sense of inferiority became stronger and stronger. The rapid progress of the antagonist made impossible putting in the field so many

fighting men that there could be an attack upon Germany, and the utmost that patriotic Frenchmen could hope for in another day of wrath was the saving of their country by defensive warfare. Sometimes even this seemed hopeless without assistance. Accordingly, when Russia turned aside from Europe to seek adventure in Manchuria, and when her strength, though not destroyed, for a time disappeared in the west, France perceiving that the balance of power was altered again, sought the friendship of England, and England was glad now to give it.

The relations of England and Germany attracted little attention until the beginning of the twentieth century, when the wonderful progress of Germany, the industrial competition which resulted, and the immense power which she was gaining, caused increasing disquietude among British leaders. At this time, also, hostility during the Boer War became more ominous when Germany, avowing that her future lay upon the sea, began a naval program greater than any nation had ever undertaken. The construction of warships was carried swiftly forward, and for a time seemed to threaten British superiority on the sea, and, as many thought, the existence of their empire. Thus was brought about a situation fraught with peril for the future. England came to believe that she must seek powerful friends to stand with her, and so began making friendships and settling old disputes. Germany hastened and increased her efforts. Suspicion and recrimination followed, and the probability of conflict was openly discussed. Therefore, England having entered into friendly relations with Italy and America, sought the friendship of France, and became presently less suspicious of Russia. Then a mighty change became apparent: England who had so long stood apart, finding her interests outside of European entanglements was presently the center and indeed the inspiration of a vast combination opposed to Germany. The avowed object was defence; but Germans refused to believe that this coalition did not threaten their safety, and they saw in the activity of England a monstrous attempt to isolate their empire, surround it with enemies, and deprive it of chance to expand and seek out its "place in the sun."

In 1904 an agreement ended all disputes between England and France, each nation making promises and concessions. This Entente Cordiale was possible because memories of bitterness were dying out; but it was owing principally to the dread which both nations had of the Germans. And a change as significant soon followed in the relations between England and Russia. The fact that Russia, defeated in Asia, now seemed less menacing there, and that she was the ally of friendly France, combined with growing fear of German plans to secure an understanding between Petrograd and London. Hence, in the first ten years of the century there came to be not only the alliance between Russia and France, but also the friendly understanding between France and England, and then the understanding between Russia and England. And as interest and ambition made this three-fold connection stronger, the whole group was referred to as the Triple Entente, and by 1912 represented the armed camp confronting the Triple Alliance.

The recent history of Europe is the history of the opposition of these two groups. The purpose of each was to maintain the existing situation, though probably on both sides there were leaders who aimed at the mastery of Europe. In resources and in actual power the opponents were not unevenly matched. In territory, in number of men, and in financial resources, the powers of the Entente were indisputably superior; but with the Triple Alliance there were advantages of cohesiveness, organization, and position which seemed to redress the balance; while the tradition of German military supremacy still held powerful sway.

England had immense resources in money, and she held within her empire a fourth of the territory and a fourth of the population of the world. But the bonds which united the parts were loosely drawn. The problem of framing some scheme of federation to present a strong and united front to enemies seemed hopeless to most Englishmen, while enemies believed that the first touch of disaster would see the empire crumble into fragments. And if it were doubtful whether the outlying parts could give effective assistance, it was certain that England herself, lacking as she

did a huge army like those possessed by her neighbors, would in case of a sudden blow be nearly impotent upon land. She must have the great wars fought upon the continent. She must support France against Germany, as once she had supported her against Spain, and later had supported Germany against France. Ultimately her salvation must lie in mastery of the sea. Here German competition was felt more severely each year, but as England had become alarmed in time and made prodigious efforts, her predominance was still unquestioned.

The strength of Russia was uncertain. So far did she lie across the world, and so vast was the number of her men, that there was in her bulk and immensity something horrible. About the end of the nineteenth century the Muscovite millions seemed a menace to the remainder of the world. But this legend had been shattered by the events of the Russo-Japanese War, which revealed inferior military and naval organization, corruption and incapacity in the government, and ignorance and discontent among the masses. After 1905 Russia was for some time of little weight in Europe. She was, indeed, recovering, but her enemies boasted that when she had recovered, she would be unwieldy and incapable as she had been in the far east.

In many respects France was more feared than England or Russia. From the awful disasters of 1870 she had recovered completely. In respect of ready money France was now the nation best prepared to fight. The frontier had been fortified impregnably, and the ardor of Frenchmen had built up an army which might be inferior to the German, but which the Germans themselves held in high respect. France they believed their enemy most dangerous and immediate, and the plans of their general staff always contemplated the first stroke to the west, and the crushing of France before her allies could render assistance. It was always doubtful whether France could hold her own: it was not certain that the temperament and genius of the people permitted the painstaking organization which the example of Germany made necessary, nor was it probable that a republican government allowed of the rapid disposition and iron control which must be expected in Berlin; while stationary popu-

lation face to face with enormous increase in Germany made a conflict more hopeless every year. "I hold France in the hollow of my hand," the emperor is said once to have declared.

There were, then, in this group France powerful and efficient, but smaller and weaker than Germany; Russia vast and incalculable, but of doubtful quality; England wealthy and all-powerful at sea, but untried in a war of armed nations. In a great conflict, moreover, these peoples must operate upon exterior lines, while it was not certain that all of them would act together. Always the bond of their union was thought of German aggression.

In the camp of the Triple Alliance there were elements of weakness still more pronounced. Formally the union was stronger than that of their rivals, but actually this was known not to be so; for the power of one of the partners was doubtful, and the action of another uncertain.

As to the strength of Germany there was never any doubt. Those who passed down the Rhine or went to Berlin saw everywhere colossal power. In the rising cities, the mounting numbers, and the vast material creations of this country there was a sheer vitality which one saw not so much in England and little in France. And in Germany the very purpose of the civilization seemed different. The army was the most powerful in the world; nowhere did numbers and equipment go so far to make a nation invincible; and no army could be so quickly assembled and hurled upon its enemy with such awful speed and precision. The navy, a newer creation, had grown monstrously and was now feared by every nation nearby. As an inheritance from the great war German soldiers believed that their army was unconquerable. Finally, the power of a great and intelligent people was wielded by a government autocratic in spirit, in character capable and efficient.

The closest alliance in Europe was that which bound Germany and Austria-Hungary. Whatever happened, it was nearly certain that Austria could count upon Germany, and in turn would follow her lead. But probably the alliance was stronger than the ally. About the Dual Monarchy there was something so artificial and conglomerate that apparently it was held together by

pressure from without, though some found the chief bond in the person of its aged ruler, after whose death the fragments must fall asunder. It was an unwieldy mass of many races and creeds. The peoples had never been fused into one nation, but lived under a government medieval and reactionary in spirit, which controlled by keeping them apart. The strength of the government resulted from an agreement by which a German minority in the north and a Hungarian minority in the south held in subjection all others; but even between these two quarrels were violent and bitter. In the Hapsburg monarchy was little of the strength which comes from the spirit and enthusiasm of national feeling, while in military and material things it was lacking and effete.

As to Italy, her progress had been one of the most hopeful signs in the recent development of Europe. Among the people much misery existed, and undoubtedly the country was poor, but population was increasing rapidly, and along with it prosperity and wealth. An army and a navy had been built up beyond the resources of the people, but they made Italy a strong ally and important in high politics. She might, then, be of much assistance to the powers of central Europe, but it gradually came to be seen that she was an unwilling member of the alliance. Into this alliance she had come through fear and anger at France, but the causes of fear had long been removed, and of France she was now a good friend. On the other hand, Austria, the old enemy and oppressor, still held unwilling Italians within her domain, while in the Balkans and in the Adriatic the rivalry of Austria and Italy became steadily more intense. In 1911 Italy attacked possessions of Turkey, the friend of the Germanic powers, and when as a result of the war she was left with spoil of Tripoli, the rift between herself and her allies widened, since her new province could be held no longer than she remained at peace with the Triple Entente. Though it might be good policy not to withdraw from the Triple Alliance in ordinary times, it was not certain that Italy could be brought to fight against France, and doubtful whether she would not one day give Austria defiance.

Thus it may be seen that the union of some of the partners was uncertain. Austria and Germany acted as one, but Italy stood with them as a result of conditions which no longer prevailed. In the opposing camp England and France were now true friends, and would most probably support each other, while Russia and France were bound by definite alliance and perhaps by common interest, but between Russia and England there were differences which had long obtained and were now suppressed only because of common fears. The ties, then, which bound some of the nations were artificial and repugnant, and might well dissolve as conditions changed; but there were also forces of such antipathy and such immeasurable depth that they could not easily be disposed of, and would hardly be removed without conflict. They were Pan-Germanism against Pan-Slavism, and the rivalry of Germany and England.

The ideas which underlie the first of these forces are so vast, indefinite, and comprehensive that it is difficult to understand and define them, nor is it certain that even their champions have reduced them to clearness and precision. By Pan-Slavism may be understood the idea of uniting in one great power all the Slavic peoples, who together would seek out their destiny; but less directly it means the increase of Russia and her expansion toward Constantinople and the Adriatic, and lordship over the races of the earth. Pan-Germanism is a vaguer thing. In the beginning it meant the union of all Germans in Europe, and perhaps of the Germans scattered in lands beyond, but in later years it has come in some sense to mean the rising ambition of Germany and Austria to obtain the mastery of the sea and the hegemony of Europe, and by building up a great empire from the Baltic Sea to the Persian Gulf, win for themselves the mastery of the world. Between these two ideals there might be truce, but there never could be compromise, for the realization of the one meant always the destruction of the other. Success would probably come to whichever power controlled the Balkan peninsula. When Russian battalions guarded the Bosphorus and Aegean waters, then at last would Russia have her window upon the world; but on that day at Constantinople would Russia

control all Danube trade, her finger would be upon the artery of Austria, and on that day must come to an end the dream of the Germanic powers to stretch their dominion down to Babylon. And, on the other hand, if ever Germany through Austria won the Bosphorus and the Hellespont, then would Russia, thrust back upon the north and south and east, lie like a giant bound among its enemies, a vast but an interior and a secondary power. In the Balkans, therefore, was the danger-spot of Europe. The destinies of polite and wealthy nations were here in the keeping of plotters and peasants and mountaineers.

More imminent, as some believed, though less necessary, was conflict between Germany and England. There was a group of Prussian historians who taught that the interests of the two were irreconcilable. In the past Germany had given herself over to religion, philosophy and idealism which became the common heritage of mankind, while England, sheltered by ocean and favored by currents and wind, had stood like a robber baron by the road of the commerce of the world, and from the toll which she levied there had grown wealthy and great. When her neighbors fought, she stood craftily aside, pitting one against the other, and winning greatest profit in the end. By chance, by accident, by the favor of the gods, not by merit, England now held a vast empire and commerce; but this empire was decrepit and rotten with prosperity and decay. Now at last when the German people had forged their unity and strength into a mighty weapon and begun their quest for the greater empire which their greatness predestined, everywhere the world was preëempted, everywhere it was portioned among English people or their allies, while England held at her mercy the trade of Germany as once she had held the commerce of Holland; and whenever Germans sought to expand and win their way, always England plotted and thwarted and held them back. Evil as this was, it was intolerable that a vigorous, youthful nation should suffer so at the hands of one aged and tired. But there would come a day when the German fleet, mightier every year, could strike with fatal effect, when German battalions could march into London, and divide up a wondrous spoil. Then would the future of Germany

begin, for then she would hold the mastery of Europe, the commerce of the world, and the islands of the sea which had been England's. Even the Muscovite might then be bought off, or thrust aside into India, or given Constantinople, so that Germany and Russia between them might rule the world.

It is not impossible that the ruling caste, efficient yet reactionary, confronted by the rising tide of democracy strong in Germany but politically more fettered than in other free countries of the west, that this ruling caste sought to postpone the decline of its system by entrancing the people with projects of imperial splendor and world dominion, which by the logic of fate must be at the expense of Great Britain's empire. How many of the German people believed these things one may not say, perhaps an increasing number; but certainly there were Germans who proclaimed them, and in England produced uneasiness, alarm, and then panic. Men remembered how Denmark and Austria had been struck down and France lured to her ruin, and bethought them how in darkening days of the past their ancestors had fought against Philip and Louis the Grand. Was their heritage now at stake in new peril? Therefore England's jealousy and envy were all tinged with fear. Expansion, the winning of colonies, creating a great fleet, to Germany seemed glorious and proper ambition and mere doing what England had once done herself, but in all such efforts England saw threat and aggression. So British warships were multiplied, and ceaselessly from Whitehall a net was woven about Germany to hold her back and bind her in.

For nine years the powers who divided the greatness of Europe faced each other in armed and portentous peace. Four times was the flood near to bursting its wall. In 1905, France with the sanction of England made ready to acquire Morocco, but Germany, defying both antagonists, forced the abandonment of this design. Three years after, Austria, violating the Treaty of Berlin, incorporated Bosnia and Herzegovina within her dominion, when the wrath of Russia was quenched by the warlike demeanor of Germany, who appeared beside her ally in "shining armor." Both of these triumphs were secured before Russia had recovered

from her defeat by Japan. But as the balance of power was once more restored, the opposing group was more resolute. In 1911 France entered again upon her quest in Morocco. In the crisis which followed Europe was brought to the verge of war, but in the end Germany yielded, Morocco fell to France, and the Entente secured a great triumph. Next year the Balkan War made a situation equally grave. The army of Austria was mobilized, and a vast body of Russians gathered behind the girdle of Polish fortresses. But once more the statesmen of Europe averted the great war, and this crisis like the others passed away.

The outcome of the Balkan War made it nearly certain that this could not be done again, for the results of the war involved a change in the great game which the rival powers were playing. Down to 1913 Germany and Austria had gained advantages in the Balkans and reduced the prestige of Russia. Rumania was almost an appendage of the Triple Alliance, Turkey was coming to be considered so, and the other countries were weak, hemmed in by hostile neighbors, or distracted with local quarrels. It might seem that while Germany held Russia in check, Austria would march in triumph to Salonika. But the events of 1912 and 1913 produced a revolution. Servia, Montenegro, Bulgaria, and Greece, combining suddenly, fell upon Turkey and overwhelmed her in rapid and decisive campaigns, and when Austria, appalled by the sudden turn of events would have intervened to stay their progress, the opposition of Russia prevented her taking any action. The final result was the appearance of a group of powerful Balkan States who looked rather to Russia than central Europe.

The immediate consequences were far-reaching and profound. The Triple Alliance now became weaker at the same time that it was called upon to face more numerous enemies. Through the efforts of Austria an independent Adriatic state, Albania, had been constituted from the relics of the Turkish domain. Here Italy and Austria began striving for predominance with increasing ill-will and suspicion. Austria, long bounded on the south by friendly Rumania, indifferent Bulgaria, and by Servia hostile but helpless, now found these nations so much stronger and

so little friendly that she must thereafter keep no small part of her military forces to guard her frontier against them. This meant that she could now marshal fewer soldiers against Russia, and it meant that Austria and Germany were relatively weaker than before.

Now this alteration occurred at a time when the star of the Triple Alliance was no longer ascendant as it had been after 1904. The fact that Germany had suffered disaster in the controversy over Morocco was certain indication that England and France had gained much confidence and strength, while Russia, forgetting her evil fortune in the east, had applied herself so diligently to the task of recuperation, that it was no longer possible to neglect her or put her to shame.

There was much alarm in Germany in 1913. The shadow of Russia seemed cast across the empire, and fear and darkness prevailed in many quarters. The old revenge of France might be more dreaded now, and one cartoon showed Delcassé riding the Russian elephant toward Berlin. So, the German authorities who had long used the enmity of England to forward naval expansion, played now upon fear of Russia and obtained a huge increase of the army, raising it to 800,000 men. This they asserted was a purely defensive thing, designed to redress the balance upset by events in the Balkans; but to France it seemed ominous of coming attack, and she made a last effort to offset the preponderance of her neighbor. By extending military service from two to three years, she did obtain a considerable increase in her army of the first line, but it was realized that this was literally the last card which she could play in the gamble of fortune. At the same time Russia made great enlargement of her standing army, and throughout Europe naval expansion went on apace.

Melancholy days had come. The great nations, assembled in two groups, confronted each other always expecting war and always armed for the fray. In their train the smaller ones were gathering. Vast armaments, involving, as they did, perpetual anxiety and heavy taxation, might for a long while maintain equilibrium, but one day they would probably lead to conflict.

So great was the burden that some even hoped for the speedy coming of war to remove what could no longer be borne. But the most peaceful dared not disarm for fear of annihilation. At the beginning of 1914 probably some knew that the storm so much dreaded and so long postponed was about to burst at last.

The events which led immediately to the catastrophe of the summer are only known in part, nor can they be learned completely until some generations have passed; but certain elements of the situation and certain fundamental factors are understood now, perhaps, as well as they can be when the archives have yielded up their secrets.

Certainly there was the rivalry of Germany and England, resulting from the power and ambition of Germany, and the dread and jealousy of England. In Germany there was irritation at the unceasing hostility of France, and a growing desire to crush her since her friendship could not be obtained. In France the memories of the great war had left undying hatred, the statues of the lost provinces remained draped in mourning, and there lingered the dream of revenge and the redemption of Alsace and Lorraine. In eastern Europe a mightier conflict was looming up between Teuton and Slav, a conflict growing in the lap of fate. And finally, the nations whose increase was rapid were allied with time which would surely hereafter give them victory. It was to the interest of France and England to strike before there were more German millions. It was Germany's interest to wait, except that Russia growing still more rapidly made it fatal for her to delay.

A peculiar cause is thought by some to have been the changing character of the German people. It is probably true that Germany had been altered by too great success. The unparalleled triumphs of the Franco-Prussian War had given German leaders supreme confidence, and to the soldiers belief that they were invincible. This feeling, which might have become nobility and firmness, tended to appear as haughty arrogance, because of the completeness with which it possessed men's minds, and because of a materialism based upon immense material prosperity. Kindliness and homely virtue might still be the character of many

Germans, but this was thought to be less evident than half a century before. The ruling caste and hosts of followers now worshipped might and force and power. According to hostile foreigners, the teaching of Nietzsche that Christian morality was the base and servile relic of olden times so far prevailed that by Germans Christianity was being discarded. Old, pernicious doctrines that might was right, and the end makes good the means, reappeared in new and dangerous guise. In other nations arose distrust and appalling fear that Germany would strike without pity and without remorse, and exact to the very uttermost, while in Germany such boasts were loud and frequent. All this was best expressed in the writings of Bernhardt, well known now, but more dreadful when they first appeared: that war was necessary and ennobling, that no consideration outweighed necessity, that France must be struck down so that never again could she be an opponent, that the reckoning with England must follow, and that superior German culture must be spread by the sword.

But much that her enemies regarded as arrogance and aggression was always the expansion and increase and prosperity of Germany, and she saw in their fear of her and combining against her only bitter and dangerous envy. England seemed the greedy opponent, lying across her way and thwarting expansion; France a neighbor whose friendship had often been sought, who persisted in sullen wrath; Russia a power inferior and reactionary, but huge and perpetually a menace. To German people, wedged in between these foes, military perfection did not seem essentially militaristic, but the sole shield with which they warded off ruin and death. And to many the aggressive spirit, acknowledged to exist, was only that spirit which had once given their rivals a glory and a success which the past had denied to themselves.

The torch was kindled in the Balkans. Austria desired to recover what was lost in 1913. Serbia stronger and more ambitious now yearned to possess Servian provinces which Austria had annexed in 1908. In Bosnia and Herzegovina was begun a propaganda, supported probably by Servian authorities, irritating to Austria and dangerous, and which culminated in June

in the murder of Franz Ferdinand, heir to the Austrian throne. Austria, to avenge this crime, hoping, perhaps, to crush her insolent little neighbor, and apparently seeing an opportunity to regain the leadership of the Balkan peninsula, launched at Servia an ultimatum which no independent state could entertain. The terms of this ultimatum and the scant time allowed for an answer made it evident that Austria expected no compromise. The Servians appealed to Russia. If their country made entire surrender, or if Russia failed to respond, then Slav predominance in the Balkans would be only a memory of the past.

Russia gave support, and Austria and Russia began to mobilize. There was small chance that Austria could withstand the onset, or that Germany would permit her to be crushed alone. But because of the alliances which existed, if Germany entered the lists, then France must enter also, and the general conflagration would begin. Though we may not know certainly, it seems that France and England desired peace, and made efforts to secure it. The hopes of Europe, therefore, lay in the possibility that Germany might restrain her ally, and that Austria, though exacting from Servia satisfaction, might allay the apprehensions of Russia.

And now millions of humble people and travellers scattered across the continent became aware of the cloud which rose like a hurricane. Difficulties appeared in the way of peace. The ominous hush was broken by the march of troops and the rattle of arms. "The angel of death is abroad. We may almost hear the beating of his wings."

Upon whom the blame directly rests must long remain matter of opinion. Austria abated her demands too late. Germany arming apace required that Russian mobilization cease. France receiving peremptory question what she would do, replied that she would act as became the interests of France. In the early days of August there was war between Austria and Servia, and between Germany and France and Russia. Italy finding her interest not with her allies declared that the terms of the alliance allowed her in the present situation to remain neutral.

The position of England was peculiar. In such a war her in-

terests were bound up with those of France, with whom she had entered into such agreements that all the French navy was in the Mediterranean, while her own ships were in the North Sea. As a point of honor she could not allow France to be attacked by sea in the north. Moreover, if France were crushed, not only would England have lost her first line of defense, but if the writings of Pan-Germanists might be believed, all the coast from Antwerp to Boulogne would be seized, and Germany could then wait at her leisure for "the day." If war between England and Germany were inevitable, as many believed, then it was far better to fight now along with Russia and France, than without friends contend with a mightier Germany of the future. But a strong party asserted that conflict could be avoided in the future, and that to fight in this war meant strengthening Russia, a crime against Germany and civilization.

Germany herself decided the issue. The frontier of France from Belfort to Verdun was well-nigh impregnable. The general staff believed that a war against France and Russia must be fought by the swift crushing of France and the turning against Russia with full force, and it was suspected that German armies might in case of need march straight through Belgium upon Paris. Belgium desired above all things to remain out of the strife, but it was her misfortune to lie in the way. Certainly the neutrality of the country had been guaranteed by a treaty to which Prussia had been signatory, but as the chancellor said, necessity knows no law, and the man who hews his way must not think of the wrong he does. The beginning of hostilities saw the violation of Luxemburg and Belgium. Then were awakened all those apprehensions which had existed in England from the time of Elizabeth to the younger Pitt, and a few days more found England with Belgium in the circle of Germany's foes.

It has been thought that this summer was chosen to precipitate the conflict because of the supposed weakness of the Triple Entente. France was distracted by scandal and confession of military weakness; Russia by industrial unrest; and England by the controversy over Home Rule. It might well have seemed in

Berlin that the moment was at hand to strike for world dominion—or downfall.

But however this be, it may be seen that the causes which led to the cataclysm had long been in operation. They must be sought in the curse of militarism, the spoliation and resentment of France, the envy and apprehension of England, the arrogance and prosperity of Germany, the weakness of Austria, the rise of the Balkan states, and the glowering menace of Russia.

The blood and the tears and the ruin of Europe bring little of hope as yet. Russia all-powerful and reactionary? Germany over Europe, omnipotent in arms? Europe exhausted and spent? Perhaps in some wondrous way good will be wrought from the wreck, but this we do not yet see. Man who knows little of the present knows not the future, and must watch in dumb expectation the loom of the universe rush on.

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON CONSTITUTIONAL QUESTIONS, 1911-1914

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As the last summary in the REVIEW of the decisions of the United States Supreme Court on constitutional questions included the cases at the October term, 1910-1911,¹ it may be desirable now under a few headings to group the cases which seem to be of fundamental importance decided during the three judicial years commencing in 1911 and concluding in 1914. Without any numerical summary (which would be difficult and of little value in view of the fact that many cases in which constitutional questions are raised by counsel and briefly referred to by the court are of no significance as indicating any new development or application of constitutional provisions) it may safely be said that the number of important cases in which difficult constitutional questions have been decided has during this period been unusually large. As the activity of Congress in pushing its legislative power constantly closer to the line of its constitutional authority increases, the number of cases in which the limits of such authority are necessarily involved must also increase. But it may further be suggested by way of rough generalization that the principles of constitutional law relating to other subjects on the boundary line between state and federal legislative powers has become reasonably well established, and comparatively few cases of importance relating to their application have recently been decided by the Supreme Court.

¹ *American Political Science Review* (1912), vol. vi, pp. 513-523.

EXERCISE OF POWERS BY FEDERAL GOVERNMENT

Some cases relating to the exercise by the federal government of its constitutional powers may well, however, be first noticed.

In exercising its power to establish a uniform rule of naturalization Congress in 1906 enacted a statute containing a provision for the cancellation of certificates of citizenship fraudulently and illegally procured,² and in the case of *Luria v. United States*³ the question was raised whether this provision was applicable to certificates previously issued. The significant feature of the new provision was that if the alien to whom such certificate had been issued should within five years thereafter return to the country of his nativity or go to any foreign country and take permanent residence therein such act should be considered, *prima facie*, evidence of a lack of intention on his part to become a permanent citizen of the United States at the time of filing his application. The person to whom a certificate had been issued in 1894, soon after that date left the United States for South Africa and there remained a resident until the proceeding for the cancellation of his certificate was commenced in 1910, returning to the United States in the meantime only for a temporary purpose; and the Federal District Court in which the proceeding to cancel his certificate was instituted reached the conclusion as a matter of fact that the residence in South Africa was intended to be and was permanent in character and as a matter of law that under the presumption declared by the statute the certificate was therefore fraudulent and should be cancelled. This conclusion both as to fact and law the Supreme Court affirms on the ground that even during so long a period as five years the acts of the applicant for the certificate might be taken into account in determining his good faith in making it, and that as good faith intention to become a citizen of the United States was essential to the validity of the certificate issued to him, there was no unconstitutional deprivation of any right in subjecting a certificate issued before the passage of the statute to the test provided for therein.

² Act of June 29, 1906, Sec. 15, 34 Stat. 601.

³ 231 U. S. 9.

The status of the Pueblo Indians and in general the nature of the supervision which the United States is justified in exercising over the Indians and their lands is subject of consideration in *United States vs. Sandoval*⁴ which was a prosecution under the laws of the United States for introducing intoxicating liquor into the Indian country. The question considered was solely whether the Indian pueblos in New Mexico are "Indian country" but as bearing upon that question the court considers certain portions of the enabling act under which the State of New Mexico was admitted to the Union, pertinent provisions of the act being that the convention adopting a state constitution should provide by an ordinance irrevocable without the consent of the United States and the people of said State that the introduction of liquors into Indian country including "all lands now owned or occupied by the Pueblo Indians" was forever prohibited, and that all the laws of the United States prohibiting the introduction of liquor into the Indian country should apply to the Pueblo Indians and their lands. The validity of these provisions of the enabling act as against the contention that Congress cannot deprive a newly admitted State by compact, although declared to be irrevocable, of its right to regulate its internal police affairs, nor thus reserve to itself the right to regulate, manage and control private property in such State is met with the suggestion that proper subjects of Congressional legislation may be regulated by an enabling act deriving its force, not from its nature as a compact, but from the authority under which it is enacted and that if the subject matter was one for Congressional legislation the form of the enactment was immaterial. As to whether the status of the Pueblo Indians and their lands is such that Congress may prohibit the introduction of liquors into such lands is therefore found to be the vital question in the case, and after a consideration of the history of the relations of the Pueblo Indians to Mexico before the termination of Spanish sovereignty and later to the government of the territory of New Mexico, the court reaches the conclusion that without regard to whether these Indians have become citizens of the United States they require

⁴ 231 U. S. 28.

special consideration and protection like other Indian communities, and that not only under the constitutional authority to regulate commerce with Indian tribes, but also under a power arising from the necessary exercise on the part of the federal government of the right to subject the Indians to guardianship for their own protection and in their own interest, Congress was authorized to enact the regulations in question. For these reasons the court holds that the legislation in question does not encroach upon the police power of the State or disturb the principle of equality among the States.⁵ Under quite similar reasoning the court holds in *United States vs. Pelican*⁶ that Congressional legislation for the punishment of crimes committed against Indians upon lands constituting part of an Indian reservation at the time of the admission of a State into the Union but subsequently allotted to the Indians in severalty, continued valid and effectual for the conviction of a white man for the murder of an Indian on such lands.

RELATIONS OF THE STATES TO THE UNITED STATES

That there was no purpose in the case of *United States vs. Sandoval*, *supra*, to abandon the rule often announced that the powers of a State after admission to the Union are not limited or restricted by any compact embodied in the enabling act is clear from the decision in *Alabama vs. Schmidt*,⁷ that school lands conveyed to a State in connection with its admission to the Union become absolutely and without limitation the property of the State, to be managed by it or sold as it may see fit without further grant of authority.⁸

⁵ The nature and extent of the power of the federal government to legislate with reference to the introduction of intoxicating liquors into an Indian reservation, although it may be within the limits of a State, is discussed with the same result in *Perrin vs. United States*, 232 U. S. 478.

⁶ 232 U. S. 442.

⁷ 232 U. S. 168.

⁸ See also *Cincinnati vs. Louisville & Nashville R. Co.*, 223 U. S. 390, in which the court holds that the compacts embodied in the Ordinance of the Northwest Territory ceased to be obligatory on the States carved from that Territory after their admission to the Union.

An important question as to the relation of the States to the United States is involved in a line of decisions as to the power of a State to impose upon a foreign corporation, as a condition of its right to do business in the State, that it shall not remove causes to the federal court. In a suit by a citizen of Oklahoma brought in the court of that State against a railroad company, incorporated in another State, the defendant asked a removal on proper grounds to the federal court, and in pursuance of authority attempted to be conferred upon him by a state statute, the Secretary of State declared the license of the defendant company to transact business in the State to be forfeited and revoked. The conclusions reached by the Supreme Court in *Harrison vs. St. Louis & S. F. R. Co.*⁹ as the result of many previous cases is that the statute is invalid as plainly and obviously forbidding a resort to the federal courts on the ground of diversity of citizenship between such parties. In the later case of *Missouri Pacific Ry. Co. vs. Larabee*¹⁰ the same proposition is reasserted with the result that a state statute is held unconstitutional which purported to allow the taxation as damages in an action determined in the state court of attorney's fees for prosecuting a writ of error to the Supreme Court of the United States, should such a proceeding be resorted to by the unsuccessful party, no such allowance of attorney's fees being authorized by the federal statutes.

The old question as to the right of a State to tax the instrumentalities through which the federal government exercises its powers was raised in a case in Minnesota in which the Supreme Court of that State sustained the validity of a state tax on bonds issued by municipalities in the Indian Territory and the Territory of Oklahoma while those territories were in existence. On appeal to the Supreme Court of the United States the judgment of the Minnesota court was reversed¹¹ on the ground that the subsequent action of Congress in erecting the territories into a State with or without an assumption by the new State of the obli-

⁹ 232 U. S. 318.

¹⁰ 234 U. S. 459.

¹¹ *Farmers, etc., Bank vs. Minnesota*, 232 U. S. 516.

gations of the former federal agency would be in effect to impair the obligations of a contract. This result is predicated on the general proposition that not only the territorial governments but the municipalities of the territories were instrumentalities and agencies of the Federal Government with whose operations the States were not permitted to interfere by taxation or otherwise, the issuing of municipal bonds being the performance of a governmental function.

The duty of the United States to guarantee to every State a republican form of government is considered in *Pacific Telephone Co. vs. Oregon*,¹² in which the constitutionality of a statute imposing a tax on telegraph and telephone companies was questioned on the ground that it had been adopted under provisions of the state constitution authorizing legislation by initiative. The contention of the appellant was that it is an essential characteristic of a republican form of government that the legislative power be exercised by a legislative department composed of representatives of the people chosen by election. It was also contended that the enforcement of a tax imposed otherwise than in the exercise of legislative power constituted a violation of the guarantee as to due process of law. The court reaches the conclusion that the argument as to due process of law is necessarily involved in the question as to a republican form of government and as to that question after restating at length the discussion in the historical case of *Luther vs. Borden*,¹³ announces its conclusion in conformity with the reasoning of that case that the determination whether a state government is republican in form is political and not judicial in its character, and points out that the assault which the contention advanced by the appellant makes "is not on the tax as a tax but on the State as a State," and that such contention is made, "not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State,

¹² 223 U. S. 118.

¹³ 7 Howard, 1 (1849).

republican in form." This case furnishes the final answer to the question raised as to the validity of the amendment to the constitution of Oregon, adopted in 1902, authorizing the exercise of legislative power by the people under the initiative and referendum, which as against the claim that it provided for a government not republican in form was sustained by the Supreme Court of that state in *Kadderly vs. Portland*.¹⁴

PROTECTION OF DEFENDANT IN CRIMINAL PROSECUTION

The guaranty of the Fourth Amendment of the Federal Constitution against unreasonable searches and seizures was involved in *Weeks vs. United States*.¹⁵ In a district court of the United States Weeks was charged with violation of the federal statute prohibiting the use of the mails for the purpose of transporting lottery tickets and complained of the introduction in evidence against him of certain papers including lottery tickets and letters in respect to the lottery which had been taken by the United States marshal on a search of his private room without warrant. The validity of this method of securing evidence had been questioned by an application made by the defendant to the trial court preliminary to the trial in which he had set forth the facts as to the method in which the evidence had been procured and asked that the officer be required to return to him the papers thus taken, which application the court refused. The holding in the Supreme Court is that such application should have been granted and that there was reversible error in afterwards admitting such papers in evidence over the defendant's objection. The court recognizes the rule frequently announced that on the trial of a criminal case the court is not required to enter into a col-

¹⁴ 44 Oregon 118 (1903). The validity of a city ordinance adopted by referendum was sustained in the case of *Pfahler*, 150 Cal. 71 (1907). The same conclusion as to the validity in this respect of city ordinances was reached in *Eckerson vs. Des Moines*, 137 Iowa 452; while a different conclusion was announced in the case of *Farnsworth*, 61 Tex. Crim. Rep. 342, 135 S. W. 535, 33 L.R.A. (N. S.) 968 (1911). Constitutional provisions for legislation by the initiative and referendum have been sustained in the cases of *Hartig vs. Seattle*, 53 Wash. 432 (1909), and *Ex parte Wagner*, 21 Okla. 33 (1908).

¹⁵ 232 U. S. 383.

lateral investigation as to the method in which competent evidence has been secured, but distinguishes the present case on the ground that as the defendant had made a seasonable application for the return to him of the instruments of evidence taken in direct violation of his constitutional rights, the subsequent admission of such instruments in evidence against him was a prejudicial error for which a reversal should be granted.

INTERSTATE COMMERCE

While there have been many cases decided involving questions of interstate commerce and therefore dependent in a general way on the constitutional provision giving Congress power to regulate commerce among the several States, such cases for the most part involve only the construction of statutes, the constitutionality of which is conceded. A few questions have arisen, however, in which the court has been required by the nature of the case to go back to the fundamental propositions as to what is commerce among the States and to what extent the grant of such power excludes state legislation.

Of the cases defining interstate commerce, by far the most important are the Pipe Line Cases,¹⁶ in which certain companies, owning pipe lines for the transportation of oil from one State to another, contested the validity of the provision of the Hepburn Act¹⁷ making the Interstate Commerce Act applicable to any corporation or person engaged in the transportation of oil by means of pipe lines. In the exercise of the authority thus conferred the Interstate Commerce Commission required such companies to file with the Commission schedules of their rates and charges and suit was brought in the Commerce Court to annul this order. The showing was that the companies contesting the validity of the order of the Commissioners were all engaged in the transportation of oil through pipe lines owned or controlled by them only in case that the oil to be transported was sold to the company transporting it on terms more or less dictated by itself, save that one of the companies was engaged only in transporting

¹⁶ 234 U. S. 548.

¹⁷ Act of June 29, 1906, 34 Stat. 584.

through its pipe lines oil produced by its own wells in one state to its refinery in another state. The fundamental contention seems to have been that as the statute amended regulates only common carriers it could not be applied to companies engaged only in the transportation of their own property; but this contention is met with the assertion by the court that the statutes mean no more than that those who are common carriers in substance must become such in form, for in fact they afford the only practicable means of shipping oil from large interior oil fields to the sea coast for disposal. The reasoning of the case seems to be that those who see fit to engage in the transportation of oil by pipe lines from one state to another may be prohibited from doing so otherwise than as common carriers. The majority of the court was also of the opinion that the company engaged in transporting oil from its own oil wells in one state to its refinery in another was not within the provisions of the act. The chief justice on this point differed from the majority, being of the opinion that while the business of such company in the transportation of oil was interstate commerce within the meaning of the statute, the statute could not be made applicable to it without violating the due process clause of the Fifth Amendment, since to apply it in such case "would necessarily amount to a taking of the property of the company without compensation." In a dissent Mr. Justice Kenna insists that the companies did not devote their lines to a public use when they were used only in the transportation of oil which the companies had purchased and that they could not be compelled by legislation to abandon the use of such lines otherwise than as common carriers. The result of the majority opinion is apparently to authorize legislation declarative of a public use based on economic considerations in respect to privately owned property employed solely in the private business of the owner.

The subordination of state regulations to regulations imposed on common carriers by federal statutes enacted under the power to regulate interstate commerce is emphasized in the *Shreveport case*,¹⁸ involving the validity of an order of the Interstate Com-

¹⁸ *Houston, etc., R. Co. vs. United States*, 234 U. S. 342.

merce Commission that higher rates should not be charged for interstate shipments than were charged by the carriers for corresponding service under similar conditions for transportation on their lines between points in the same state. Conceding that the rates between points in the same state were subject to state regulation, the court reached the conclusion that nevertheless charging a lower rate for the carriage of goods between points in the state than that which the carriers were authorized to charge for same transportation from a point without the state to a point within the state was a discrimination against interstate commerce and it says that "wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the Nation, would be supreme within the national field." And further: "This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled." The result of the case seems to be that a common carrier engaged in interstate business and complying with the rates fixed for such business by the Commission may be prohibited from discrimination against its interstate business by charging a lower rate for intrastate business, though the latter rate is fixed by the state, so as to induce shipments to be made between points in the state which would otherwise be made to points outside of the state. Two justices dissent from the court's opinion. It is to be noted that the court cites without comment the *Minnesota Rate Cases*,¹⁹ in which state rates affecting only intrastate commerce were sustained as against the contention that they resulted in a discrimination against interstate shipments. The distinction between the cases no doubt is that in the *Minnesota Rate Cases* the question was primarily

¹⁹ 230 U. S. 352.

as to the validity of state legislation, while in the last case the question was directly involved as to the validity of an order of the Interstate Commerce Commission made in the exercise of powers conferred upon it.

Nevertheless the proposition is still adhered to that state regulations of the business of common carriers are valid, although indirectly affecting interstate commerce, so long as the federal power has not been exercised as to the same subject matter; for it is held in *Atlantic Coast Line R. Co. vs. Georgia*²⁰ that a state statute requiring railroad companies to equip their locomotives with electric headlights can be enforced although such locomotives are being employed as instrumentalities of interstate commerce.

Notwithstanding the decision in *Adams Express Co. vs. Croninger*²¹ and many cases following it that in view of the insertion in the Interstate Commerce Law by the Carmack Amendment to the Hepburn Bill of the provision that common carriers engaged in interstate commerce shall issue through bills of lading, state statutes are invalid as to interstate commerce which prohibit the issuance of bills of lading containing a limitation of liability to the value stated therein by which the rate of compensation is determined, or forbid a short limitation of time for making claims for damages,²² nevertheless in *Missouri, K. & T. R. Co. vs. Harris*,²³ the court sustains as still valid and not superseded with reference to interstate commerce by the Carmack Amendment, a state statute imposing attorney's fees as a part of the damages which may be recovered for breach of the carrier's duty.

CONTRACT OBLIGATIONS AND OTHER VESTED RIGHTS

The distinction between the police regulation of the exercise of rights conferred by a franchise and the complete abrogation of a franchise which is not in itself in excess of the power of the municipality to grant is pointed out in *Grand Trunk Western*

²⁰ 234 U. S. 280.

²¹ 226 U. S. 491. The cases following this are numerous. They are cited in *Missouri, K. & T. R. Co. vs. Harris*, 234 U. S. 412.

²² *Missouri, K. & T. R. Co. vs. Harriman*, 227 U. S. 657.

²³ 234 U. S. 412.

R. Co. vs. South Bend,²⁴ and a state decision upholding the partial repeal of an ordinance granting such a franchise is reversed (two justices dissenting). Likewise in Owensboro vs. Cumberland Telephone Co.²⁵ an ordinance granting a perpetual franchise for the use of the streets of a city for telephone purposes is sustained against the contention that in the granting of such a franchise without limitation there is an implied reservation of a power to repeal. From this conclusion, four justices dissent.

DUE PROCESS AND EQUAL PROTECTION

As is usual in reviewing the decisions of the Supreme Court involving constitutional questions, the large majority are found to relate to the limitations on state legislative power found in the provision of the Fourteenth Amendment guaranteeing due process of law and the equal protection of the laws. Of these, however, few announce any new principles or rules of decision, though some interesting illustrations of rules previously announced are to be found.

The extent to which the state may go in the regulation of private business without transgressing the limits of due process of law or the equal protection of the laws is the subject of the decision in *German Alliance Ins. Co. vs. Kansas*,²⁶ involving the right of a state to regulate fire insurance rates. Conceding that the right to prosecute the business of insurance is a natural right, receiving no privilege from the state, voluntarily entered into and concerning only personal contracts for indemnity, the majority of the court holds that such private business is in its nature nevertheless affected with a public interest and therefore subject to state regulation as to rates. Three judges dissent on the ground that under the *Munn Case*²⁷ which furnishes a landmark, the business must be affected with a public interest and the property employed in its prosecution must be devoted to a public use, and without the concurrence of public interest

²⁴ 227 U. S. 544.

²⁵ 230 U. S. 58.

²⁶ 233 U. S. 389.

²⁷ 94 U. S. 113.

and the employment of property devoted to public use, the right to fix rates or prices does not exist; and that as the insurance business involves only the making of contracts it is not subject to the rate-making power of the state. That the police power does not, however, include the power to interfere with the use of property purely private in its nature for the promotion of the general welfare or pecuniary interests of the owners of other property is illustrated by the case of *Eubank vs. City of Richmond*²⁸ in which it is held (reversing the decision of a state court) that an ordinance fixing the building line on private property abutting a street according to the wishes of the majority of the property owners is not valid as against an owner who is thereby prejudiced. As to forms of business which are in their nature subject to police regulation such as the sale of intoxicating liquors, the legislative power of the state is not subject to judicial review on the ground of wisdom or reasonableness and it is therefore held in *Purity Extract Co. vs. Lynch*²⁹ that a state statute having for its general object the prohibition of the sale of malt liquors was not unconstitutional although it might result in the prohibition of the sale of liquor not in fact intoxicating or otherwise injurious. Likewise it was held in *Hammond Packing Co. vs. Montana*³⁰ that a state might forbid the manufacture of oleo-margarine without violating the due process or equal protection provisions.

That the right to make contracts may be interfered with in the exercise of the police power without infringement of due process of law is decided in *Schmidinger vs. Chicago*³¹ upholding the validity of a statute regulating the weight of loaves of bread offered for sale; and in *Sturges & Burn Mfg. Co. vs. Beauchamp*,³² sustaining a state statute prohibiting the employment of persons of tender years in dangerous occupations. In *Erie R. R. Co. vs. Williams*³³ the court, following many previous cases, again sus-

²⁸ 226 U. S. 137.

²⁹ 226 U. S. 192.

³⁰ 233 U. S. 331.

³¹ 226 U. S. 578.

³² 231 U. S. 320.

³³ 233 U. S. 685.



tains the validity of a state statute regulating the payment of wages to employees, with the pertinent suggestion that the employer cannot complain that such a statute interferes with freedom of contract on the part of the employee. Such a statute applicable only to particular classes of employers has also been sustained as against the objection that it was not applicable to other employers who might improperly engage in similar practices.²⁴

That the guarantee of equal protection is not infringed by a classification which has regard to the evil to be remedied although it results that similar evils are not reached is illustrated by the case of *International Harvester Co. vs. Missouri*²⁵ in which a state antitrust act was sustained, although it did not apply to labor organizations nor to purchasers as distinct from sellers combining in restraint of the freedom of trade. But in *Smith vs. Texas*²⁶ it is held that equal protection of the law is denied by a state statute so fixing the qualifications for pursuing the business of a railroad conductor as to exclude from such employment persons equally qualified with those who by statute are permitted to pursue it. On the other hand in *Patsone vs. Pennsylvania*²⁷ a state statute was sustained which made it unlawful for any unnaturalized foreign born resident to kill any wild bird or animal and in furtherance of this general purpose, declared it "unlawful for such foreign born person to own or be possessed of a shot gun or rifle," the contention as to discrimination being met with the suggestion that the state legislature could not be assumed to have acted without warrant in making a classification to cover the peculiar source of the evil which it is desired to prevent.

²⁴ *Keokee Coke Co. vs. Taylor*, 234 U. S. 224.

²⁵ 234 U. S. 199.

²⁶ 233 U. S. 630.

²⁷ 232 U. S. 138.

THE ESSENCE OF DEMOCRACY

WILHELM HASBACH

Mr. W. J. Shepard, in a review of my work, *Die moderne Demokratie*,¹ remarks that I have forgotten its spirit in the study of its forms. "It is not the vitalizing spirit," he writes, "the impelling motive force, the broadly based popular sentiment of democracy that is of interest, but only the forms and mechanism . . . of democratic-republican states." Now I have in the fifth chapter of the second book presented the theory of political democracy, in the sixth that of social democracy, and in the seventh that of democratic socialism; and in the first of these three chapters I have discussed popular sovereignty and active citizenship, the supremacy of the majority in a democracy, the unlimited constituent power of the people (*pouvoir constituant*), in which European science has conceived the essence of this form of the state to reside in contradistinction to other forms. But Mr. Shepard has a different conception of its nature. He has raised an interesting question in this connection which I should like to discuss in the following pages.

Brief though his statement on this point is, no one can doubt that he considers the supremacy of public opinion as the essence of democracy, since he writes: "No discussion of the nature, elements and effects of public opinion, no appreciation of the spirit of democracy is to be found in the covers of this volume." As a matter of fact I have treated of this subject in the above-mentioned first division of the fifth chapter, which is devoted to the discussion of popular sovereignty, though certainly in the brief compass which appeared to me sufficient for the understanding of the nature of democracy. Why have I not ascribed the same significance to it as does Mr. Shepard? Because public opinion rules in every modern form of the state; not only in

¹ In the *American Political Science Review*, November 1913.

democracy, but also in parliamentary and even in constitutional monarchy. The rights of man exist likewise in constitutional monarchy; freedom of association and the press are here also established; here also thousands of newspapers and associates seek to realize their ideals and desires, and if necessary to influence parliament. Nothing could be more mistaken than to assume that government here could premanently be conducted against public opinion. To be sure Bismark succeeded in this for several years, but under quite peculiar circumstances, and when he had attained his patriotic goal he sought indemnity. But that such discord may occur also in a democracy is proved by the conflict between Lincoln's successor and congress, or that between MacMahon and the French chamber.

If we accept the supremacy of public opinion as the essential characteristic of democracy, it is quite impossible to distinguish the forms of the modern state; all differentiation of definition is annulled. Everything is fused into a vague conception of "democracy." It would be exactly like calling the circulation of the blood the essential characteristic of the species Man.

But since science presupposes the ability to differentiate by clear cut and sharply circumscribed definitions, we must go a step farther. For this purpose I repeat briefly what I have said about public opinion in the above-mentioned citation. I distinguish between a spontaneous and an artificially constructed public opinion. In every case, I have there stated, there is an original public opinion on definite questions (in which I of course premise European continental conditions), e.g., that the reduction of military service would be an advantage, that certain communal taxes should be abolished. But concerning the questions: gold standard or double standard; continuation of canal construction with the extension of the railway system—concerning these, an opinion would have first to be formed in the leading circles which then through agitation would be propagated among the masses. Moreover since there are generally several opposing opinions upon current questions, of which only one can be dominant in parliament, it is not public opinion pure and simple which rules, but the stronger (artificially formed) public opinion, which however as

a matter of fact might be in a minority among the electors; while that public opinion which is the weaker in parliament, but perhaps stronger among the voters, is for long periods suppressed.

With the distinction between a spontaneous public opinion and a public opinion disseminated by agitation, the question presents itself: Who forms public opinion? In democracy and parliamentary monarchy it is created exclusively by parties; in constitutional monarchy, on the other hand, by parties and the government. For a full understanding of this important difference we first must clearly distinguish between parliamentary and constitutional monarchy. In parliamentary monarchy the influence of the monarch is as a matter of fact so far suppressed that here too the stronger party opinion determines the destiny of the country, while in the constitutional monarchy the prince as joint possessor of the legislative power, and as the possessor of the executive, exercises a considerable influence upon the formation of public opinion. The ministers nominated by him introduce bills into parliament; they defend them against the criticism of representatives whom they are compelled to face; the prince addresses messages to parliament; he can dissolve it and thereby take a position on definite question; official newspapers defend the attitude of the government; party organs which approve the policy of the government support it or open their columns to it; the government seeks to influence representatives, etc. These are methods some of which are also understood in America: in America the President addresses messages to congress; presidents and governors attempt to influence the legislative power; there are also newspapers which support President and governors against the legislative assemblies if they consider the former's policies advantageous.

This discussion suggests why I have considered the fly-wheel of democracy and of parliamentary monarchy to be not public opinion but the domination of party; why I have devoted to this subject the entire third book of my treatise. But how distinguish democracy from parliamentary monarchy?

If we consider the frequent disregard of the people's wishes by their representatives since the days of the Long Parliament,

the relentless efforts of these representatives to emancipate themselves from their constituents; if we think of the numerous measures which have been taken in both the United States and in Switzerland to subject the representatives to the will of the people, it must be clear that parliamentary government and democracy are not simply identical. Democracy exists only where, as in some of the cantons of Switzerland, the people determine directly their own destiny, or where through direct primaries, the referendum, the initiative and the recall they are able to enforce their will upon their representatives. It follows that parliamentary government is that form of the state in which party exerts its will through representatives of the people; democracy is that form in which this is done through the people themselves.

This proves sufficiently that the essential characteristic of a form of the state can express itself only in definite institutions and forms. These are, therefore, not merely important objects of study; they are indeed to be described as "natural," since they are, so to speak, the outer form which the spirit of different types of the state has created for itself without which it could have no existence. But Mr. Shepard calls the form "artificial." "Natural" he apparently considers the expressions of public opinion. Does he really believe that the public opinion expressing itself at elections to the effect that the silver standard alone will guarantee the public welfare is a natural fact? Let us draw some conclusions from this. The parliamentary democracy, as it exists in France, is from the standpoint of definition a contradiction in itself. Representative democracy as we have it in the American Union and in most of the member States cannot be considered pure democracy. It is closely related in its character to constitutional monarchy because Montesquieu is the common ancestor of both. But since the fathers of American representative democracy had to realize their ideal under different conditions, the idea of Montesquieu has taken a form in the United States different from that which it has taken in Germany. Hamilton, Madison and their associates sought to infuse this idea into a state whose fundamental principle was that the will

of the people should be realized through representatives; party they viewed with doubt. Hence all the barriers of the separation of powers, which they had set up against the omnipotent will of the people, gradually break down; it is sufficient to recall the arrangements concerning the election of the President and of the senators and the progress of direct democracy in the individual States. In constitutional monarchy, on the other hand, such barriers could be maintained. In the second place, the separation of powers was realized in a far more absolute fashion than was possible in the old monarchies. The monarch preserved much greater power because he was not elected, although he was compelled to share the legislative power with parliament. It was impossible that the legislative power should become as independent as in America; parliament and ministers must coöperate and, mutually controlling each other before the people, satisfy popular demands. In the third place, the bureaucracy was maintained which was appointed on the basis of prescribed qualifications and was not arbitrarily removable. It was indeed with this bureaucracy that the European monarchs had developed, if not created, the culture of their countries.

It is interesting to perceive that, while on the one hand the idea of pure democracy has more and more asserted itself successfully in America, on the other hand several features of constitutional monarchy appear desirable to many citizens; such features are the greater power of Presidents and governors; an efficient civil service, independent of parties and appointed on the basis of prescribed qualifications; the appearance of ministers in the legislative body and the reciprocal control of government and representatives, "to set up one tyrant against another," as a Leveller in the seventeenth century expressed it (compare the Oregon plan of government).

If now we glance back upon this short discussion, we see that the supremacy of public opinion cannot be accepted as the essence of democracy. Since it rules in all modern states the important question is: How it is formed? On the other hand the conception of the stronger opinion enables us to distinguish constitutional monarchy from democracy and from parliamentary

monarchy—in the constitutional monarchy the party opinion rules as if it were dampened. Democracy and parliamentary monarchy are distinguished by the organs through which the stronger party opinion is realized,—in the latter by the representatives of the people; in the former by the people themselves or by their representatives under the supervision of the people. Thus the classification of the forms of the state, created by the Greeks, remains true. Today there is still a monarchy, but a modern monarchy, the constitutional monarchy. Today there is still an aristocracy, but a modern one, that of parliamentary government. As in classical antiquity, there are real effective monarchies, which modern aristocratic and oligarchical elements are at work to overthrow. And today there is an old as well as a new democracy which maintains the appearance of parliamentary government while denying it all effective power, just as oligarchical and aristocratic elements aim to subdue monarchy while allowing it the appearance of power in parliamentary monarchy.

Forms are not only expressions of the spirit; they react also upon the spirit that dominates different forms, as I shall prove in the case of constitutional monarchy.

In constitutional monarchy the party leaders are not the government; that is the reason why all parties stand continually opposed to it. There is ample opportunity for giving vent to this distrust because the government has to defend its measures in parliament. There is no form of government in which financial administration is so painfully scrutinized; there is no other form where delinquencies of officials are so pilloried. Since through this watchfulness the interests of the citizens are protected, the unpolitical instinct of the citizen, which you find in all state forms, and which is in itself completely justifiable, grows; governments are indeed created so that the citizen may, undisturbed, devote himself to his business. A further result is the high value set upon the professional bureaucracy; ministers issue from the highest social strata. The highest social classes prefer above all things to have their children enter the bureaucracy which attains the highest posts of honor. Honor, according to

Montesquieu, is the principle of monarchy. Thus is a standard of measurement created which is valid for all classes. Those who do not belong to the bureaucracy at least seek titles and orders which express an affiliation with it. Neither membership in parliament nor wealth as in democracy is able completely to satisfy ambition, not even nobility. Read the Memoirs of the Duke of Saint Simon—how he execrates the social claims of bureaucracy, and especially the war minister, Louvois. Traces of this spirit are to be observed even in the Freiherr vom Stein and in Bismarck, although the nobility had played a leading rôle in the formation of the bureaucracy.

Do I need to explain explicitly to a judge of human nature how many enemies such a form of the state will create for itself? Such are the party leaders who find the way blocked to the highest posts of honor, parties endeavoring to dominate the state and to exploit it for themselves, interests which seek satisfaction through parties, and those wealthy people whose sons have not found places in the bureaucracy and who have not found social distinction by means of titles and orders. The extreme parties, moreover, attempt to prove again and again that the government is incapable and corrupt, at least reactionary, even when in many directions it may have assumed the lead and set a standard.

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THE FEDERAL TRADE COMMISSION: THE DEVELOPMENT OF THE LAW WHICH LED TO ITS ESTABLISHMENT

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It was *Munn vs. Illinois*¹ that first interpreted the constitutional provision empowering Congress to regulate commerce² in such a way as to charge private business with a public interest. Since that epochal finding our courts have made comparatively swift progress, reaching ultimately (through the *Standard Oil*³ and tobacco decisions) a federal trade commission to regulate competition in trade and to restrain illegal combinations.⁴ All of this has been done during the professional life of many lawyers of today, for *Munn vs. Illinois* was decided in 1876.

Writers upon the trend of legislation and of court decisions had clearly predicted this last development of corporation law.⁵ The incident of climax importance however, was the remanding of the oil and tobacco cases to the circuit courts where the decrees of dissolution were to be worked out in conjunction with the department of justice. This was administrative work, and a department of the executive branch of the government should do it. Hence the creation of the trade commission, empowered to investigate the carrying out of the decrees of the supreme court and to prepare the form of decree in certain cases referred to it by the circuit courts.

¹ (94 U. S. 113.)

² Art. viii, sec. 1.

³ *Standard Oil vs. U. S.* 221 U. S. 1. *U. S. vs. American Tobacco Co.* 221 U. S., 66.

⁴ Sec. 5 and sec. 6 of act to create federal trade commission.

⁵ Wyman, *Control of the Market*, Chap. x, 238; Chap. xii, 277; Van Hise, *Concentration and Control*, Chap. v, 270.

Before analyzing the new commission it will be interesting to trace the development of court opinion by means of the cases which have brought us to our present conception of the law. Restraint of trade has been a topic of importance since the time of Elizabeth.⁶ No ruling was made in this country, however, until 1876 when some farmers in Illinois sought to compel the firm of Munn and Scott, owners of a grain elevator, to store their grain without discriminatory charges. The proprietors, of course, insisted upon their inherent private property rights. The court defined the limits of private property rights under the common law, and, quoting Lord Chief Justice Hale (*De Portibus Maris*) said, ". . . looking then to the common law, from whence came the right which the constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.'" And the court found that the warehouses of the plaintiffs in error were so charged with a public interest.⁷

This was sure footing for a beginning. The court was clear and decisive in its position. Henceforth, even at common law, there was to be a public regulation of business "clothed with a public interest." We were soon to see a statutory qualification. Eleven years later, namely, in 1887,⁸ Congress created the interstate commerce commission to regulate transportation rates. Lively opposition greeted the new board and "a time of suspended activity" in business was freely predicted.⁹ Indeed, the public itself seemed not to understand the powers of the commission, and for some time the commission was not very effective.

The board, however, exercised its regulatory powers and the railroads did not become bankrupt. Public opinion gradually

⁶ Stimson, F. J., *Lectures, Tendencies of American Legislation*.

⁷ The court said: "Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of the statutes is to remedy defects in the common law as they are developed and to adapt it to the changes of time and circumstances."

⁸ Approved, Feb. 2, 1887.

⁹ *Fin. Chronicle*, vol. xlvi, 70, 100, 133.

came to approve of its existence and there were audible mutterings about government control of industrial corporations as well. These found expression in a few years (1890) in the enactment of the Sherman anti-trust act¹⁰ to restrain combination or conspiracy, the intent of which was to monopolize trade.

The armament of the "trust busters" was now deemed adequate; a commission to regulate railroads, and an anti-trust statute to cover everything else in interstate trade. But public opinion was again slow to apprehend.¹¹ The common law had declared a trust illegal¹²—what the Sherman act could do in addition, no one seemed to know. The spirit of the times was anti-trust. There was no doubt of that and the court had taken judicial notice of it.

In this state of confusion the "trust" lawyers decided to turn the new law to their own use. In 1894 they sought to have the combination clause of the act made applicable to the labor organization which called the great railroad strike, and they succeeded.¹³ Indeed, Eugene V. Debs went to jail for contempt of the court's injunction. Here was a use of the Sherman act probably never contemplated by its framers. Incidentally, it illustrates the error of those of our own day who believe that labor unions are exempt from the law.

The next attempt to apply the Sherman act came in 1895 and this time it was against a corporation.¹⁴ A company manufacturing sugar in Pennsylvania which was sold in New York, was held to be outside the pale of the law, for manufacture was held not to be interstate commerce and this was so whatever the intention of the manufacturer.¹⁵ So far, corporations had profited by the law.

¹⁰ Approved July 2, 1890. First three sections prohibit restraint and monopoly and seventh section gives party injured treble damages.

¹¹ Wyman's *Control of the Market*.

¹² *People vs. North River Sugar Rfg. Co.* (121 N. Y., 582).

¹³ *In re Debs* (158 U. S., 564).

¹⁴ *U. S. vs. E. C. Knight* (156 U. S. 1).

¹⁵ The case turned on a close vote of 5 to 4. It has since been thought that the government attorneys were no match for the trust lawyers. At any rate, the view then announced, that manufacture was not commerce, has not since

Two years after the labor case the tables were turned and the Sherman act received its first anti-corporation interpretation, when an agreement between railroads west of the Mississippi affecting freight moved within the so-called Missouri river territory (a typical pool) was held to be an attempt to restrain trade.¹⁶

Even the majority opinion in the Knight case assumed that transportation was within the Sherman act, but it still remained for a court to include everyday commerce. And to those who believe the present Democratic administration to be anti-corporation in establishing the trade commission, it may be of interest to learn that William Howard Taft was the first judge to apply the Sherman act to the ordinary industrial combination. The Addystone Pipe case¹⁷ came up to the supreme court on appeal from the circuit court opinion written by Judge Taft, and that opinion was affirmed. Incidentally, it is worth noting that the case was one of the citations made by Chief Justice White in justifying the conclusions of the supreme court in the 1911 trust case.

Judge Taft's opinion defined interstate commerce very inclusively. It said, ". . . the soliciting of orders for, and the sale of goods in one state, to be delivered from another state, is interstate commerce in its strictest and highest sense." There was no doubt now as to whether the Sherman act applied to anything except transportation. The courts might vary the form of attack, but by 1899 they had clearly decided that every kind of interstate business was covered by the Sherman act.

been urged. Instead manufacture is regarded as one step in a scheme the entirety of which may amount to intercourse and trade, and when this trade is between states it comes within the Sherman act. It will prove interesting to read the ground taken by Justice Harlan who wrote the minority opinion.

¹⁶ *Trans-Missouri Freight Association* (166 U. S. 290).

¹⁷ *U. S. vs. Addystone Pipe and Steel Co.* (175 U. S. 211). This, briefly, was an association of pipe manufacturers with elaborate rules which precluded individual members from bidding upon jobs until the association had sold the right to go after the job to the member bidding the most for the privilege. Once a job was "sold" to a member, he was to be left free to get the best price he could without competition from others.

And its next application was a variation in form of attack—a stretching of the law to include holding companies.

In the Northern Securities case the court said that a combination of two previously existing companies, effected through the common control by a third company, must not destroy competition, either actual or potential. This unquestionably struck at the legal device of a single company holding control of actual competitors. The end of industrial combination through the medium of the holding company was now in sight.

Public opinion very readily condemned Standard Oil and American Tobacco as huge holding devices, but it was only after some years of spectacular litigation¹⁸ that the companies had their “day in court.” So that, in 1909 when the cases reached the supreme court, that tribunal was chiefly concerned not with the question of legality but with the question of dissolution. By this time, the following had been accomplished:

The trust had been definitely held illegal.¹⁹

The pool was plainly wrong.²⁰

The holding company ceased to exist in interstate trade.²¹

The single corporation had been found objectionable to some state courts,²² and perfectly acceptable to others.²³

The oil and tobacco companies had already been condemned at the tribunal of public opinion and courts could be counted upon to take cognizance of the situation. But public opinion also favored something constructive. And Chief Justice White's opinions in the oil and tobacco cases offered a happy solution of a bothersome problem. Competition was to be restored by the circuit courts and the department of justice in pursuance of the court's decree.

¹⁸ Standard Oil had been fined \$26,000,000 in the lower courts. American Tobacco had had the treble damage recovery clause of the Sherman act enforced against it.

¹⁹ *People vs. North River Sugar Rfg. Co.* (121 N. Y., 582).

²⁰ *Trans-Missouri Freight Association* (166 U. S. 290).

White Star Line vs. Star Line (141 Mich. 604).

²¹ *Northern Securities* (193 U. S. 197).

²² *Atty. Gen. vs. Booth* (143 Mich. 84).

²³ *Trenton Potteries vs. Oliphant* (58 N. J., equity, 507).

This ruling made necessary the new federal trade commission, for courts could not continue indefinitely to supervise the corporations they were forced to create. The dissolution of the Standard Oil Company created thirty-three separate corporations where before (1909) there were sixty, and segregated the tobacco company into fourteen companies. Some of these new corporations have capitalizations as high as \$100,000,000. Thus the "big corporation" as an institution was judicially noticed. Unregulated competition was at an end. Regulation of competition is administrative work for an executive department. Hence the federal trade commission.

This is the legal genesis of the trade commission. Its functions are very elaborately prescribed in the law, and court decisions indicate how the commission is to exercise them. The commission must see to it that trade is not restrained, either by unfair competition or illegal combination. This work is not new, but it is an innovation to have a department of the government doing it. In addition the commission is to act as a statistical department for the nation, making investigations and reports concerning corporations and industries, domestic and foreign trade, etc.

But it is with its quasi-judicial powers we are concerned. Section 5 of the act prohibits unfair methods of competition and empowers and directs the commission to prevent persons from using them. The criticism has been made that this provision is unconstitutional.²⁴ But there seem to have been interpretations enough to indicate what the courts will regard as "unfair methods of competition," and in the last analysis it is the court holding that will really count, for all orders of the commission may be reviewed, upon petition, by the circuit courts of appeal. In a broad way, "that is held to be fair which the community regards as consistent with its safety; that is held unfair which the

²⁴ Fin. and Com. Chronicle., vol. xcix, 694, quotes Robt. R. Reed as follows: . . . "unfair competition . . . was recognized by the courts and in effect covered only unfair acts tending to the destruction of competition—acts, that is, which could be committed only in the attempt to establish a monopoly. 'Unfair methods of competition' is capable of no such construction."

state considers dangerous to its peace.”²⁵ More specifically, courts have held that it is not an unfair method of competition to make a representation concerning goods offered for sale by a rival so long as there is no imputation upon the rival individually, but only upon the goods which might be handled by anybody. So when a tradesman said that lubricators offered for sale by a rival were not good for that purpose but wasted the tallow, there was “damnum sine injuria.”²⁶ It was held to be a fair method of competition for R. to make a preparation and call it “cherry pectoral” even though A. had for years been selling a preparation by that name, and the words had long been associated with his product. And R. could advertise as follows: “A.’s Cherry pectoral, \$1; R.’s, 50 cents, which will you have?”²⁷

Puffing statements have been held to be a fair method of competition, even when you wrap up a commodity in a paper bearing an advertisement of another brand of the same commodity, which advertisement says the second brand is better “than any other preparation yet offered.”²⁸ It is a fair method of competition to put out goods in a way similar to that in which another brand of the same goods is handled, since these ways are common to the business concerned.

But it is an unfair method of competition to induce another to break a contract entered into with a rival even though the other contracting party had not begun its performance.²⁹ This is so in the case of a single contracting party as well as where many are concerned.³⁰ But query, where in spite of a pre-existing contract, one in absence of fraud, induces another to sell certain goods to him at a higher price than the vendor had already agreed to sell the same goods to another, and the purchaser knew of such earlier agreement.³¹

²⁵ Wyman, *Control of the Market*, Chap. iii.

²⁶ Evans vs. Harlow (Q. B. 1844).

²⁷ Ayer vs. Rushton (7 Daly 9).

²⁸ White vs. Mellin (House of Lords, 1895).

²⁹ Lumley vs. Gye (Q. B. 1853).

³⁰ Glamorgan Coal Co. vs. So. Wales Miners’ Fed. (2 K. B. 545).

³¹ Chambers and Marshall vs. Baldwin (91 Ky. 121).

Of course fraud is always an unfair method of competition but courts have gone further and said that it is unfair to appropriate the use of a geographical name which has come to acquire a special signification when applied to certain commodities.²² Likewise the use of one's own name has been restricted under such conditions.

Enough has been shown to indicate that the commission should not have great difficulty in saying what are "unfair methods." The new view as evolved from the cases has been defined as holding that every man in business has the right to freedom from competition unless competition can be shown to be justified, whereas the ancient view was that one could do anything that was legal to get business.²³

Similarly the cases indicate what the commission may be expected to do in regulating combination. Upon the application of the attorney general the commission is to investigate any corporation alleged to be doing business in violation of the anti-trust act,²⁴ and that corporation is to readjust its business in accordance with the recommendation made by the commission. Where a final decree has been entered in any suit brought by the government against a defendant corporation to prevent restraint of trade, the commission is to make, on its own initiative, investigations as to the manner in which the decree is being carried out.²⁵ This is the work done by the courts in establishing the reorganized oil and tobacco subsidiaries. It applies only to decrees "hereafter" entered, and it was necessary to introduce a Senate resolution (Senator Gore, Oklahoma, September 28) in order to have the commission supervise the manner in which the Standard Oil subsidiaries are carrying out the decree in that case. Finally, the legal work required provides that where the attorney general brings suit under the anti-trust act against any corporation the court may, upon completion of testimony, if relief is granted,

²² *Waltham Watch vs. U. S. Watch Co.* (173 Mass., 85).

²³ *Wyman, Control of the Market.*

²⁴ Sec. 6, paragraph e.

²⁵ Sec. 6, paragraph c.

send the case to the commission as a master in chancery, to ascertain and report an appropriate decree.³⁶

This briefly outlines the development of the law up to the cases calling the commission into existence. It will be interesting to note what has transpired since the trust cases of 1911. Primarily those cases indicated that the common law "rule of reason" was to be the determinant in saying whether combinations are in restraint. The court intimated that where a statute was enacted to give definiteness to common law principles existing at the time, common law standards should be adopted in interpreting the statute. And by common law, prior to 1890, only those combinations were objectionable which went to the point of monopoly in restraining trade. So we find in a recent Rhode Island case³⁷ the court declaring a combination not a monopoly and defining a monopoly as "any combination the tendency of which is to prevent competition in the broad and general sense and to control prices to the detriment of the public." Combinations for mutual advantage which do not amount to a monopoly, but leave the field of competition open to others are neither within the reason nor the operation of the rule. It is unreasonable restraint for manufacturers and dealers in patented goods, even though they own the patents, to combine and destroy competition.³⁸

In a shoe machinery case the court held that manufacturers owning patents to machines required in the manufacture of different parts of a certain commodity may combine without violating the law.³⁹

On the other hand, it has been held an unreasonable restraint to purchase patents held by a company, then buy up the majority stock of that company, pigeon-hole the patents and reduce the company to idleness.⁴⁰ And the salient feature of the Addy-

³⁶ Sec. 7.

³⁷ *State vs. Eastern Coal Co.* (29 R. I., 254) citing *Oakdale Mfg. Co. vs. Garst* (18 R. I., 484).

³⁸ *U. S. vs. Patterson* (205 Fed. 292).

³⁹ *U. S. vs. Winslow* (227 U. S., 202).

⁴⁰ *Strout vs. U. Shoe Machinery Co.* (202 Fed. 602).

stone Pipe case was again held to be unreasonable restraint in an Iowa case,⁴¹ where an association of farmers agreed not to sell outside of the association without forfeiting to the association five cents per 100 weight for all grain so sold.

The principal cases that have been in the United States courts since the 1911 decrees are the Union Pacific merger case⁴² and the International Harvester case.⁴³ The railroad case does not involve the subject matter of the trade commission, but it is interesting to note that in both cases no new expressions of opinion were recorded. And yet the Union Pacific decision is peculiarly instructive by way of restating what the law has been, for the court goes to great length to show that previous decisions construing the anti-trust act were harmonious and consistent with one another. The case differed from the earlier Northern Securities case⁴⁴ in that, in the earlier case, the control through a holding company device was condemned, whereas in this case the court points out that the direct holding by one company of the stock of a potential competitor is equally bad. And it makes no difference, apparently, that less than a majority of the stock is held, for in this instance Union Pacific owned only 46 per cent of the Southern Pacific stock, which the court held to be control. This is interesting as a measure of monopoly.

The Harvester case, which is the latest United States case, held that even though a corporation was singularly free from all the evils against which the law was directed, if it tended to destroy competition and establish monopoly it was in violation of the second section of the anti-trust act. And this was so even though, as in this case, no fault was found with the methods of doing business and there was "an absence . . . of all the elements of undue injury to the public and undue restraint of trade." This case is very interesting as it applies to the work of the new commission, for its chief concern is restraint of trade by those two methods—unfair competition and undue combination.

⁴¹ *Reeves vs. Decorah Farmers' Coöperative Society* (140 NW, 844).

⁴² *U. S. vs. Union Pacific Rd.* (226 U. S., 306).

⁴³ *U. S. vs. Int. Harvester Co.* (214 Fed. 987).

⁴⁴ (193 U. S., 197.)

Finally a New Jersey court decided last month⁴⁸ that a company cannot be said to have established a monopoly in any given community when other companies still continue to do business there, and in fact increase the total volume of business done in the commodity specified after the acts complained of (price cutting) had been done.

So that the cases since the oil and tobacco decisions of 1911 have established nothing that was not settled by the cases leading up to the creation of the commission. All that has been said on trade and commerce, the courts have been saying for many years. The commission, therefore, comes on to this field of combat with the "rules of the game" fairly well defined, and with the last court of the land having intimated clearly enough three things—just what are unfair methods of competition, just what is restraint of trade and just what is monopoly. To this extent, at least, it should not be difficult for the new board to coöperate with the business interests of the country, suggesting and recommending, and thereby reducing to a minimum the likelihood of disturbing suits for dissolution, which later can hardly be contemplated with equanimity in the existing delicate situation of commerce and finance.

⁴⁸ New Jersey Court Common Pleas, September 21, 1914.

SUB-COMMITTEES OF CONGRESS¹

BURTON L. FRENCH

U. S. House of Representatives

Much has been written of the mechanics of legislation in the Senate and the House of Representatives, and of the work performed by the committees of the Senate and the House. Little attention, however, has been paid to the sub-committees of Congress notwithstanding the fact that sub-committees perform a highly important function in legislation.

The Senate and the House are both such large bodies that it is imperative that the work of the bodies be handled initially through numerous committees. In the Senate there are seventy-four standing committees. In the House there are fifty-eight. The very reasons that make it advisable that committees be appointed at all in the Senate and in the House, make it desirable in certain cases that the work of the committees be even further sub-divided as occasion may warrant. When the work assigned to a standing committee of Senate or House is of a definite character that admits of practically no division, or when the committee itself of either body is small and appointed to have immediate consideration of a particular subject, the ordinary procedure is for the full committee to handle its work, without attempting to call upon members of the committee to act as a sub-committee, with the exception of sub-committee work in performance of a perfunctory duty, or, in the preparation, for instance, of a report where one member can prepare it far more expeditiously than could three members, five members, or the full committee.

Sub-committees play a far more important part in the House than in the Senate. This is true for several reasons. There

¹This paper was written prior to the adjournment of the 63d Congress.

are more committees in the Senate than in the House and consequently there is a greater classification of work, in other words, committees frequently take the place of sub-committees. The House committees are usually larger in number and consequently more unwieldy. The House is a far larger body and pays more attention to its committee work than does the Senate, the Senate "whipping out" on the floor of the Senate much that on the House side is done within the committees. Finally on account of the Constitution in the case of bills for raising revenue, and because of long custom in the case of all the supply bills, the House takes the initiative and works out the bills before the Senate gives its consideration to the general subjects. Yet the Senate committees in part work through sub-committees and for the same reason that the most important committees of the House have long followed this practice.

There is no general authorization for sub-committees in the rules of either the Senate or the House, and both branches of Congress assume that each committee will exercise its best judgment in devising ways and means of becoming best informed on the matters referred for report.

When it is recalled that in a single Congress as many as 30,000 bills and resolutions have been introduced in the House and 10,000 in the Senate (61st Congress, House 33,310, Senate 10,906; 62nd Congress, House 29,278, Senate 8,589), it can well be understood that the only way reasonable and intelligent progress can be made is by apportioning these bills for consideration among committees, and in committees that have to do with hundreds, and even thousands of bills, the only way that progress can be made is through the instrumentality of sub-committees.

Committees as a rule appoint sub-committees with relation to the character of the work. The sub-committees of certain committees of the House and Senate are definite and permanent, serving through an entire Congress. In other cases, sub-committees are select and appointed merely for a particular service.

The sub-committees of the committees of the Senate and the House may be classified as follows:

First. Permanent.

Second. Select (or special):

- a. For general committee work.
- b. For particular investigations, etc.
- c. For preparing report of committee and minor detail work.

Third. Political:

- a. Definitely designated by the chairman of the committee.
- b. Informally called together by the chairman of the committee.

The size of the permanent sub-committees must be determined by the work in hand, but usually such sub-committees are made up of from three to five members each, though sometimes, and especially for conducting hearings, larger sub-committees are appointed. The war claims committee finds it convenient to have sub-committees of one member each as a rule, and very commonly a sub-committee of one is appointed by the other committees to perform a piece of detail work.

Committees that have permanent sub-committees are not estopped from appointing select sub-committees to handle special work, and this they frequently do.

Probably in this connection it should be mentioned that upon the floor of the Senate and the House, the chief responsibility in sustaining the action of the committee, in important matters, usually rests upon the committee chairman and the members of the sub-committee whose advice has been followed in drafting or reporting the legislation. This is especially true of supply and claims bills, and upon bills that have their origin within the committee.

PERMANENT SUB-COMMITTEES

It sometimes happens that the work of a committee of the House or Senate is so constant from year to year along particular lines and can be so readily sub-divided into divisions that will hold good through session after session, that definite sub-committees of permanent character may be named at the beginning of each Congress, and in this manner make it possible for at least a few members of the committee to become specialists upon a particular line of work.

Thus for instance the committee on merchant marine and

fisheries readily divides its work among four sub-committees under the headings, sub-committees on navigation laws, on registers, on fish and fish hatcheries, on miscellaneous. And the committee on judiciary divides its work readily among three sub-committees having to do with constitutional questions; revision of laws; court procedure, judges, etc. These are merely illustrations.

The committees whose work is of such type that sub-committees of permanent character can be appointed upon the basis of a formal classification of the work, are the following: In the Senate—commerce; corporations organized in the District of Columbia; District of Columbia; pensions; post offices and post roads; appropriations; naval affairs. In the House—appropriations; judiciary; banking and currency; interstate and foreign commerce; merchant marine and fisheries; military affairs; naval affairs; post offices and post roads; public buildings and grounds; invalid pensions; pensions; war claims; District of Columbia; accounts.

Some committees from the character of their work find it impossible to make any reasonable sub-division of work with relation to its character, but on the other hand find the work so voluminous that numerous sub-committees must be appointed in order to advise the full committee, and the work of the sub-committees is apportioned to them by the chairman of the committee, the work of each being quite similar. Chief of committees of this character are pensions, in Senate and House, and in the House, invalid pensions, claims, and war claims.

In certain of these committees there is a type of legislation of general character that may be considered by a standing sub-committee that has a function different from the rest of the standing sub-committees, as for instance in war claims where there are two distinct sub-committees that have to do with general legislation, and the reference of bills to the Court of Claims, in addition to the numerous sub-committees that have consideration of the claims themselves. Again the latter type of work may be handled by select sub-committees.

COMMITTEES WITH SELECT SUB-COMMITTEES

Some committees have no permanent sub-committees, but operate through the appointment of select sub-committees.

The reason why these committees find it a great advantage to handle their work through select rather than standing sub-committees, usually lies in the character of the work itself. A committee to which from Congress to Congress are referred bills of similar character that can be grouped readily, or a committee that has the responsibility of shaping one of the great supply bills, would not usually undertake its work through select sub-committees, but would prefer sub-committees of permanent character. On the other hand, a committee that has the consideration of bills touching so wide a variety of subjects as to admit of no reasonably distinct classification, would prefer to appoint select sub-committees as occasion would demand.

A sub-committee of the committee on appropriations, for instance, does not conclude its labors on a subject when a particular bill shall have been concluded, but the work is of such character that with the completion of the work on one bill there must follow as successive years follow each other, the same character of work to meet the conditions in the succeeding years. With a committee like public lands, the question is different. A bill that a sub-committee may report to the full committee and which may become a law may remain on the statute books without even the necessity of modification through many years, and perhaps no similar bill will need to be enacted. In other words, the work of such committees cannot well be catalogued or classified in brief space. Every bill that the committee is called upon to consider possesses individual characteristics that prevent it from being placed in the category with possibly any other bill before the committee. Work of this character cannot be assigned to permanent sub-committees, but select sub-committees are appointed to handle the particular questions as they arise.

Sub-committees are sometimes appointed to do a special work for the full committee, such as to make investigations. I recall that in the 62nd Congress in considering legislation, the com-

mittee on public buildings and grounds appointed sub-committees of five members each to make a personal examination of all the buildings in the District of Columbia owned or leased by the government and in which any considerable number of employees were assembled, to determine the adequacy of fire protection and sanitation.

The committees usually having select sub-committees are:

In the Senate: agriculture and forestry; banking and currency; coast and insular survey; education and labor; finance; foreign relations; immigration; Indian affairs; interstate commerce; judiciary; library; military affairs; mines and mining; patents; Philippines; privileges and elections; fisheries; rules; territories; claims; public lands.

In the House: ways and means; rivers and harbors; agriculture; foreign affairs; public lands; Indian affairs; territories; railways and canals; mines and mining; labor; claims; revision of the laws; election of president, vice-president, and representatives in Congress; irrigation of arid lands; immigration and naturalization; rules; census; library; roads; industrial arts and expositions.

COMMITTEES THAT USUALLY HAVE NO SUB-COMMITTEES

Another class of committees usually have no sub-committees other than sub-committees for the performance of a detailed piece of work. These are committees charged with a particular responsibility that cannot be divided readily, or with matters to the consideration of which it is advisable the committee give its united attention. The membership of these committees frequently is small in number, made up of from two to seven members, though sometimes larger committees are appointed. Committees of this class are:

In the Senate: additional accommodations for library of Congress; census; civil service and retrenchment; coast defenses; conservation of national resources; expenditures in the departments of agriculture, commerce, labor, interior, navy, justice, post office, state, treasury, and war; five civilized tribes of Indians; forest reservations and protection of game; geological sur-

vey; Indian depredations; Canadian relations; examine the several branches of the civil service; investigate trespassers upon Indian lands; manufactures; national banks; Mississippi river and its tributaries; industrial expositions; interoceanic canals; irrigation and reclamation of arid lands; Pacific islands and Porto Rico; Pacific railroads; printing; private land claims; public buildings and grounds; public health and national quarantine; railroads; revolutionary claims; standards, weights and measures; transportation routes to the seaboard; transportation and sale of meat products; University of the United States; woman suffrage; audit and control of the contingent expenses of the Senate; engrossed bills; enrolled bills; revision of the laws of the United States (joint); disposition of useless paper in the executive departments.

In the House: elections, No. 1, No. 2, and No. 3; coinage, weights and measures; insular affairs; education; patents; reform in the civil service; alcoholic liquor traffic; expenditures in departments of agriculture, commerce, interior, justice, labor, navy, post office, state, treasury, and war; mileage; printing; enrolled bills; disposition of useless executive papers; expenditures on public buildings.

It will be noted that there are three committees on elections in the House. These committees are of equal rank, are made up of small membership—seven at present—and act as courts that hear and report upon House contested election cases. The importance of having cases heard and decisions rendered as promptly as possible, makes it advisable that the work be handled by several committees rather than by one. It should probably be added that these committees do not consider legislative matters, as, for instance, bills for regulating elections are considered by the committee on election of president, vice-president and representatives in Congress.

SUB-COMMITTEES FOR DETAIL WORK

All of the committees of the Senate and the House whether they have permanent or select sub-committees, or no sub-committees at all for the general consideration of committee work,

may have occasion at times to appoint formally or informally a member or members of the committee to perform the function of a sub-committee.

The person or persons designated by the chairman of the committee to perfect the language of a bill after it has been agreed upon in substance must be regarded as a sub-committee, so, also, the person delegated to confer with the representative of a department on some feature of a measure that is being considered, or to advise informally with some member or members of the House or Senate with whom it may be advisable to consult, or to make special inquiry into questions in dispute, etc.

Again a committee, with or without referring a bill to a sub-committee, decides to report favorably the passage of the measure. The chairman of the committee either reports the bill for the committee or designates a member of the committee to make the report. The person performing this function is necessarily a sub-committee and in some instances a very responsible duty is that which is imposed upon the person designated to make the report for the committee.

It may readily happen that the entire membership of the committee may be favorable to a certain measure but may not be in harmony in the preparation of a report. They may arrive at the same ends through different methods of reasoning. The person designated to make the report has conferred upon him the responsibility as a real sub-committee to make such a report as will set forth to the House clearly the reasons that caused the committee to take the particular action that was taken.

With this general statement, I shall outline in more detail the work of certain sub-committees of the House, that may be taken as typical of the sub-committee work of similar Senate and House committees.

APPROPRIATIONS COMMITTEE

The committee on appropriations holds definitely to the policy of considering legislation through permanent sub-committees. It is true that occasionally select sub-committees are appointed, as, for instance, in the present Congress, a select sub-committee

was appointed to consider the question of surety bonds, but the ordinary work of the appropriations committee is handled through sub-committees of from five to seven members each, non-partisan in character and designated at the beginning of the first session to serve through the entire Congress.

At present there are seven permanent sub-committees that have respectively the first consideration of the following bills: sundry civil, pensions, legislative, District of Columbia, fortifications, deficiencies, and permanent appropriations.

The work of the appropriations committee is of tremendous importance, for the country is interested, not only in the question of economy from the standpoint of amount of money expended, but also in the question of wisdom in expenditure.

When I point out that in the present Congress the sub-committee that prepared the tentative draft of the sundry civil bill held hearings from February 28, 1914, to May 9 following, and besides that consumed two or three weeks of additional time in preparing the bill, and when also the sub-committee on the District of Columbia held hearings for about two months touching the budget of the District of Columbia, it may readily appear how great is the responsibility that Congress has placed upon its appropriations committee.

Frequently it happens that hearings will be going on before several sub-committees at the same time. It would be a physical impossibility for the members of the appropriations committee to sit as a committee at all hearings; to prepare all bills in detail, from the beginning; and to do the work within the period of the session of Congress, in a manner that would approach the manner in which it is handled under the present system. It is the duty of each sub-committee having in charge the preparation of an appropriation bill to make itself thoroughly informed upon every detail and item connected with the appropriation, and to be able to sustain its position before the full committee.

After the sub-committee has performed its labor and made its report to the full committee, the members of the full committee usually approve in the main the work of the sub-com-

mittee made up of what might be called "specialists" upon the particular appropriation measure.

Unquestionably the members of the full committee through the sub-committee system are able to have a more comprehensive and intelligent conception of the appropriation bills, severally as well as collectively, than they could have if they attempted by some means to sit at all times as one body, conduct all hearings, and prepare and shape the items of all bills.

I have suggested that the very nature of the work demanded of the appropriations committee makes it advisable that definite permanent sub-committees be appointed rather than select sub-committees in the preparation of the various bills. Many of the items in the appropriation bills repeat themselves from year to year. Many of them are modified by being increased or decreased. A member of the sub-committee on appropriations whose work carries him through successive Congresses upon the same sub-committee becomes an expert in his particular field and with one or more hold-over members from preceding Congresses on every sub-committee, the members newly assigned are greatly assisted in their work of obtaining a grasp on the budget.

Most of the other appropriating committees labor in much the same manner as does the general appropriation committee, to wit—the committees on military affairs, naval affairs, post offices and post roads, and agriculture, in the House; and the committees on appropriations, agriculture and forestry, naval affairs, military affairs and commerce, in the Senate.

INTERSTATE AND FOREIGN COMMERCE

One of the greatest committees of the Congress is the committee on interstate and foreign commerce. Within the last twenty-five years this committee has risen to the premiership of all committees, in my judgment. It considers bills that have to do with the regulation of commerce, pure food and cold storage legislation, public health, dams and bridges across navigable streams, safety on common carriers, frauds in commodities in interstate commerce, and numerous other questions that may

be suggested in a general way by the name that the committee bears.

Here again the work of the committee can be divided fairly well and members of the committee may become specialists in particular fields if appointed upon sub-committees that will have for consideration all legislation upon a given subject.

With this in view, and with the idea of maintaining an organization within the committee that would lend itself to the most comprehensive consideration of all bills referred to it, the policy has been followed in the 62nd and 63rd Congresses of maintaining definite standing sub-committees. In the present Congress there are ten such sub-committees and in addition to these, as special occasions arise, select sub-committees may be appointed, as for instance recently a select sub-committee was appointed for the considerations of the trade commission bill.

The permanent sub-committees are made up of from five to nine members and have to do with such distinct classes of legislation as bills for the regulation of commerce upon the one hand and pure food measures upon the other.

Hearings are held either by the full committee or by the sub-committees, but each sub-committee is expected to be well informed upon all matters which it is called upon to report to the full committee and as in other committees to which I shall refer, while the work of the sub-committees in the preparation of legislation is for the most part approved by the full committee, bills reported from the sub-committees are modified by the full committee, and, as they finally appear, represent the wishes of those members of the full committee reporting the same, guided as those wishes may be by the influence and advice of the specialists—the sub-committee that has given extensive consideration to the measure.

PUBLIC BUILDINGS AND GROUNDS

The committee on public buildings and grounds furnishes another illustration of the use of the sub-committee. I am not defending the so-called "Pork Barrel" system of locating public buildings, and, in fact, I condemn it and trust that at some time

we shall devise a system for the locating of public buildings that will have fair regard to population, public service, economy of public buildings in comparison with the renting of privately owned quarters, etc. So long, however, as the present policy of locating public buildings shall prevail, the Congress must depend upon its House and Senate committees, and in turn each committee must depend upon its sub-committees.

While the committee of the House on public buildings and grounds has occasional work throughout the Congress, its chief responsibility is that of preparing the omnibus public buildings and grounds bill which Congress passes from time to time, at intervals of from two to four years, as a rule.

Authorization for public buildings and the purchase of sites not being imperative, as is the continuation of the postal service, for instance, the policy is followed of estimating in advance the amount of money that may reasonably be set apart for this work. At a time when revenues are rapidly falling off, the postal service may not wait, but the construction of public buildings may be postponed. On the other hand, were the revenues large and the treasury full, the time would be propitious for a public buildings bill. Whether the bill shall be passed at all is not determined by the committee, but rather by the committee in conjunction with the leaders of the administration party in Congress and the administration. That is, while the Congress is not asked to pass such a bill nor advised not to do so formally, it is probable that no omnibus public buildings bill would be passed unless the passage of the same were agreeable to the administration. Even the approximate amount to be included in the public buildings bill is determined in this way. This being the case, individual public buildings bills are not passed excepting in cases of emergency, as the destruction of a public building by earthquake or fire and there is necessity for its being replaced.

Assuming, however, that the time is right for the passage of a public buildings bill, the committee on public buildings and grounds of the House occupies a very responsible position and has to do with the authorization of appropriations of from twenty

to thirty millions of dollars or more. The committee in one or more meetings determines the general terms of the bill; that is, a resolution is passed that will fix quite definitely the approximate grand total of authorization, the size of the city below which a building or site will not be considered, the approximate amounts that may be authorized for buildings or sites in cities of certain sizes, etc. Permanent sub-committees, if not already named, are then appointed of about five members each and to each sub-committee is referred a group of states in such a way that all of the sub-committees have approximately the same amount of work to cover.

It is the duty of each sub-committee to consider the bills introduced by the members of Congress from such states as may be referred to it, and to determine the items from the many bills that shall be included in the omnibus bill. Unusual cases are passed over to be considered by the full committee. The work of the sub-committees may extend over a period of many weeks, during which time hearings have been held where members have requested hearings, data has been assembled, and possibly 10 per cent of the amounts included in the individual bills referred to the committee, has been finally included, in some way, in a tentative draft of bill to be recommended favorably to the full committee as worthy of being included in the omnibus measure.

In due time the full committee assembles to consider the reports of all the sub-committees. One sub-committee will be found to have been very generous; another technical and conservative. Much dissatisfaction would be incurred in the Congress and throughout the country if these differences should be permitted to be incorporated in the general bill, and the full committee spends days of its time in harmonizing the various sub-committee sections. The full committee determines the larger items and special cases, but the great bill itself in the rough is the work of the sub-committees—the final bill being the work of the full committee.

The last public buildings bill that was reported to the House, (62nd Congress) carried authorization to the extent of a little more than \$25,500,000, and while this amount is large the great

work of "sorting out" may be suggested when I say that these items were selected from bills whose aggregate amounts had called for authorization of more than \$300,000,000.

Whether or not the bill will be just and claim a reasonable support on the floor of the House, notwithstanding the fact that bills of members have been pared down and pushed aside to the extent of 90 per cent and more, depends upon the fairness and equity that runs through the bill and this largely depends upon the fidelity of the sub-committees in performing their responsible work. The sub-committees undoubtedly perform their work in such a way as to arrive at far more reasonable results than could be attained were the bill in its entirety to be prepared by the full committee.

RIVERS AND HARBORS

The committee on rivers and harbors while having in charge a so-called "Pork Barrel" measure, usually performs its work as a full committee, though select committees may be designated as occasion warrants. The ground work of the action to be taken by this committee is so fairly well outlined by reports of the Bureau of Engineers of the War Department, and by projects already begun that there is not the imperative necessity for sub-committee work that exists in many other committees.

PENSIONS AND INVALID PENSIONS

The work of the invalid pensions and pensions committees is handled through permanent sub-committees, each sub-committee being made up of two or three members. Select sub-committees may be appointed to consider special measures, and in the committee on pensions of the House there exists a permanent sub-committee on Senate bills and general legislation, made up of three members.

In both committees general policies in the way of rules are carefully worked out at the beginning of each Congress for the government of the committees in considering private bills. These rules are worked out without respect to individual cases, and the

chief work of the sub-committees consists in applying the general rules formulated by the committee for the government of all cases, to the particular bills presented for consideration.²

For the convenience of the sub-committees all the bills from a certain group of states will be referred to sub-committee No. 1, all from another group of states to sub-committee No. 2, etc.

Of course, if upon the assembling of the full committee it should appear that one sub-committee were acting upon a different understanding than the other sub-committees of the general policies agreed upon for the government of the committee, the bills from such sub-committee would need to be adjusted to conform to such standard. As a rule, however, the sub-committees speedily adjust themselves to the policy formulated for the government of the committee and regardless of personal attitude in the matter of policy, report the individual bills or items upon the basis of the known wish of the full committee.

CLAIMS AND WAR CLAIMS COMMITTEES

The committee on claims and war claims have a responsibility somewhat similar to the responsibility of the committees on pensions and invalid pensions, but with this distinction. The committees on pensions and invalid pensions are called upon to consider for the most part the pension rating of persons claiming recognition by special act and consequently the claims involve in each individual case a comparatively small amount. On the other hand, the claims and war claims committees are called upon to consider bills involving an expenditure by the government in the settlement of claims of from a few dollars to hundreds of thousands and even millions of dollars.

A few general rules touching evidence, etc., may be adopted by the committee for its government, but in addition to this,

² The general rules define the scope of what the committee will undertake. For instance, no bill will be considered where claimant has not already exhausted all rights of application for pension under the general law, or where claimant has been pensioned by special act of Congress, or where evidence submitted is not of a definite character, etc. The full committee with rare exception sets aside the rules thus made.

each particular claim must rest upon its own merits and receives the consideration from the individual sub-committees that a court would accord the claim, were it possible for suit to be brought for the amount in issue.

The sub-committees endeavor to do justice, to apply the laws of evidence and liability that would be applied by a court, and oftentimes to award or fix damages in the amount that would probably be fixed were the case one involving the liabilities of a citizen toward another citizen.

In the claims committee, the sub-committees are made up of three members each; in the war claims committee, the sub-committees are made up of one member each with the exception of two standing sub-committees—the first made up of the two ranking members in addition to the chairman, and having to do with general legislation coming before the committee, and the other made up of three, and having to do with the reference of cases to the Court of Claims. In both committees, the work of the sub-committees constitutes expert service for the benefit of the full committee.

It often happens in connection with the work of sub-committees from such committees as pensions, invalid pensions, claims, and war claims, that one member of the sub-committee will be especially charged with the responsibility of advising the sub-committee on the merits of the proposition, and occupies a relation to the sub-committee similar to that which the sub-committee in turn occupies to the full committee.

COMMITTEE ON PUBLIC LANDS

The committee on public lands not only is one of the most responsible committees of the House, but may be taken, in the operation of its sub-committee work, as typical of a large number of committees of the Senate and the House, such as mines and mining; irrigation of arid lands; coinage, weights and measures; labor, immigration and naturalization; and Indian affairs.

The work of this committee differs for instance from the work of the appropriations committee and can not be divided in a manner that will be satisfactory. On the one hand, measures

can hardly be grouped together with respect to states, and so referred to sub-committees, for immediately there would arise conflicts of interest among states where similar conditions prevail. The policy of apportioning work according to states, while it works well with the committee on public buildings and grounds, would work outrageously with the committee on public lands.

One sub-committee might be appointed to consider all leasing bills; another all homestead measures, etc.; but the difficulty that would arise here would be the overlapping of responsibility, and interference upon the part of one sub-committee with the work referred to another sub-committee. There seems to be no reasonable way of classifying the work of the public lands committee so that definite units may be referred to definite sub-committees. In view of this, the practice has been followed for many years of considering all bills either originally within the full committee or in the pleasure of the committee, by reference to a select sub-committee of from three to five members. Very frequently several bills upon a particular subject are referred to one sub-committee especially appointed for the consideration of the bills. This is the nearest approach in the public land committee that there is to the idea of permanent sub-committee work.

COMMITTEE ON INDIAN AFFAIRS

The committee on Indian affairs does its initial work through sub-committees. The committee has no standing sub-committees but generally speaking, declines to consider any bill of particular importance that has not been considered and reported upon by a select sub-committee, of three members as a rule.

These sub-committees hold hearings. Sometimes the hearings are extensive and within the present Congress one sub-committee has held hearings extending over a period of four months while another one has held hearings extending for more than a year.

WAYS AND MEANS

The ways and means committee is the only committee of the House that adheres to the old policy that a committee that has charge of the framing of a bill should be in sympathy with the measure. Of course, the full committee is made up of members from different political parties, the controlling party in Congress retaining necessarily the majority, but for the purpose of preparing bills that must be regarded as of political character, the committee within itself follows the policy of appointing through its chairman sub-committees composed of members only of the majority party.

In the 63rd Congress, in the preparation of the Underwood tariff measure, there were seventeen sub-committees of from one to four members each, usually three, however, selected from the Democratic members of the committee.

Hearings had been held during December and January following the election of 1912 by the ways and means committee. At the conclusion of these hearings, sub-committees were, to the extent possible, selected at once and began their duties. Each sub-committee was given charge of some particular section of the revenue measure, i. e., Schedule A, Schedule B, the income feature, free list, etc.

It was the duty of each sub-committee to prepare a tentative draft of the particular section of the bill that had been referred to it, and the sub-committees were engaged in this task from January, 1913, till in April following, though probably the heaviest part of the work in each instance was performed during a period of two weeks.

After each sub-committee had prepared tentatively so much of the measure as had been entrusted to it, the draft was considered by what must be regarded as a sub-committee made up of the entire majority membership of the committee, carrying out the idea still that the friends of a measure of political character should prepare it, since the administration represented by the majority members must be responsible.

The chairmen of the respective sub-committees were necessar-

ily in close touch and were advised of the attitude and views of the majority members of the committee and in this way were able to assist in advising the respective sub-committees and shaping the sections of the bill entrusted to such sub-committees, not only in line with the general desires of the full committee membership, but also so that as nearly as possible the sections would be harmonious with relation to each other.

However, notwithstanding the tentative drafting of the various sections in this manner, the larger "sub-committee" made up of the majority members of the ways and means committee, considered every tentative draft as each was reported by a sub-committee, and, while the sub-committee draft for the most part was approved, there were many instances in which modifications were made after full deliberation, and other instances in which parts of sections that had been tentatively passed over were modified in order that they might articulate with the schedules in some other section. For instance, a modification of the chemical schedule might require a corresponding modification of such a remote schedule as Schedule K (wool).

The criticism has been made that legislation through sub-committees is faulty because the entire membership of the committee is not technically advised on all the features of the bill reported. It is my own judgment from an observation that has covered nearly ten years, that in a measure such as a tariff bill, the full committee finds itself much better informed after the painstaking work and the reports have been made by the sub-committees, than if the full committee itself were to undertake in detail the first consideration of every schedule.

The full committee and the sub-committees have at all times the benefit of expert advice from some officer or officers detailed from the treasury department. Not only this, but usually there is called to the clerkship of the committee a capable expert in statistical matters.

After the sub-committees have made their reports and these reports have been considered and the bill finally drafted by that which I said must be regarded as a sub-committee (the majority members), the completed draft of the bill is printed and "con-

sidered" by the entire committee made up of the members of the various political parties.

At this point, the rule that has controlled the committee in the shaping of the bill, that the bill should be prepared by its friends, theoretically ceases to operate, for nominally, at least, a committee made up of members of various political parties pass upon the measure itself, though it would be a singular circumstance if the measure as so drafted were not reported by the majority members of the committee and either an adverse report or a substitute bill offered by members of the minority.

Aside from the work of the ways and means committee in the preparation of measures that are regarded as political, sub-committees of the ways and means committee are non-political in character, and for the most part are made up of two members of the majority party and one of the minority. All sub-committees of the ways and means committee, either political in character or non-political, are select sub-committees.

POLITICAL COMMITTEES

The only committee whose sub-committees for important measures are generally appointed along the lines of party allegiance is the ways and means committee. The rules committee, which is practically a political committee (using the word in a perfectly worthy sense), and has much to do in aiding the Congress to follow a definite legislative program, has no permanent sub-committee though it may appoint a select committee for some specific purpose as it does at the beginning of each Congress in considering the rules. Being, as I said, a political committee, it is customary for the majority members of the committee to meet informally without reference to the minority members and discuss and agree upon a course of action to be taken when the full committee may be convened. Upon the assembling of the full committee the course of action is proposed and by motion or resolution brought before the committee and disposed of as though it had had its inception in the full committee meeting. Technically there is no sub-committee, yet as a matter of fact the members of the majority party constitute

themselves an informal sub-committee to determine upon the course of action that the committee shall pursue, the minority members of the committee being left to elect whether they will concur in or oppose the views of the majority.

Probably it should be said that this same policy is applied in other committees where it is important that the party in power agree upon a measure for which the administration stands and that it is expected or known will be opposed by the minority party. The members of a committee of the party in power oftentimes informally arrive in this manner at a conclusion that controls the committee, and at the same time avoid disclosing the exact conflict of opinion within their own ranks. No sub-committee as such has been appointed; no stated meeting of the majority members of the committee has been held; the work has been entirely informal, but none the less it has been effective.

GENERAL OBSERVATIONS

The responsibility of the committees of the Senate and the House to their respective bodies needs to be considered in this paper only as the responsibility involves the sub-committees. In the first place the number of bills presented in any Congress for the passage of which there is an unquestioned sentiment, is exceedingly few. In the present Congress probably less than a score have been introduced, including such bills as the tariff, currency, trade commission, and the various supply measures. It follows then that the pronounced sentiment behind each of the twenty to thirty thousand bills pending in recent Congresses is limited to possibly the authors of the measures and perhaps an indefinite number of other members to whose attention the measures have been called. I am not overstating the case when I say that I am confident that no member of Senate or House could name from memory one-half of one per cent of all the bills that have been presented to the 63rd Congress.

As a rule the committees and through them the sub-committees endeavor to reflect the opinion of their respective bodies upon the comparatively few measures where there is a consensus of

opinion known, so far as can be done consistent with public duty. On the vast mass of bills the committees are free to exercise a more individual discretion.

From this it will appear that while the Senate and the House have control over the committees, and have power to discharge a committee from further consideration of any measure already referred, or even to pass a bill without referring it to a committee at all, such power is rarely exercised.

Indeed the confidence of the Senate and the House in the respective committees is such that on measures where there is pronounced sentiment, the final judgment of the committees, though at variance with the judgment of the body is apt to be approved in the main. This is especially true in the House where far more responsibility is placed upon the committees than in the Senate, the Senate debating at length on the floor matters that are determined in the committees of the House.

The committees in turn, while possessing full authority over the sub-committees, very generally follow the advice and counsel of the members who have been specially charged with a committee duty.

It is sometimes asserted that sub-committees are used to avoid publicity of committee proceedings. In the case of the sub-committees that I have referred to as political, whether definitely appointed or informally called together, undoubtedly this is true. It is felt that publicity should not be given until the work of the sub-committees is completed. But in the appointment of non-political sub-committees there is rarely any attempt to avoid publicity though probably there is naturally less of publicity to the proceedings of the sub-committees than to the full committee proceedings. The full committees have what is oddly, yet commonly called "executive" sessions, and so do sub-committees, at which times the members deliberate alone, and so there could be little reason for appointing sub-committees to avoid publicity, except in the cases of sub-committees that are of partisan or political character.

Sub-committees are commonly authorized to hold hearings and frequently the very ease by which a quorum of the mem-

bers of a sub-committee may be assembled, in comparison with the difficulty of assembling a quorum of a full committee, is the reason for the sub-committee's appointment. The members of Congress have many duties and the sub-committee is often the only reasonable means of having a hearing granted to those who have asked for it, and who have journeyed maybe from California or Alaska in order to be present and to present their views upon an important subject.

Generally speaking when sub-committees are made up of so large a number as nine members, it is contemplated that hearings will be held and while the full committee, probably twice as large, can not be present, as many of their number are delegated as will not make it embarrassing to the sub-committee to hold a quorum. For ordinary committee work a smaller sub-committee is most desirable.

When one reflects on the vast number of bills introduced into every Congress one must be impressed with the idea that the problem of sorting out the ones that should pass is most difficult. In the present Congress one member introduced seven hundred private pension bills. Another introduced public buildings bills upon a basis that were it applied to all districts as generously would call for an appropriation for this purpose alone of a sum greater than the entire annual expenses of the government. Other similar illustrations could be furnished of the bills Congress is asked to consider. The committees and the sub-committees have an important duty in sorting out from the mass of bills the really important and meritorious ones and "killing" the rest. This is a responsibility that must be definitely placed so long as the Congress shall continue to do work that involves tremendous detail.

Much may be said upon this question, both for and against the advisability of making committees and sub-committees the buffer upon legislative propositions. In the great long run, a party in power is responsible and must in greater or less degree meet the praise or the condemnation of the citizens of the country for passing or refusing to pass legislation.

If a party is clothed with responsibility, with the understand-

ing that it shall not consider a certain type of legislation, it is hardly fair to the party that a very small minority that might be members of a committee should, by reporting a measure, raise an embarrassing question for the party in control. On the other hand a committee should not block the course of the Congress by deliberately holding back legislation.

It is quite impossible to point out specific instances under this head. To do so might even be to challenge the good faith of members of the Senate or the House, and possibly that which would appear to me as a reasonable deduction is as a matter of fact a conclusion that should not have been made. Undoubtedly there are times when sub-committees are appointed under conditions that make it possible for the statement, "The member will have a hard job getting by that sub-committee," to have real merit.

I recall that in one committee upon which I have served, a member of the House who was serving his first term came in and called the committee's attention to a bill that he had introduced pertaining to matters in his district that had been called to the attention of the Congress regularly for nearly 100 years. There was no possibility of passing the bill—no possibility in the first place of it being reported from the committee, for the older members of the committee were fairly familiar with it and were antagonistic, and no probability of it passing the Congress if reported by the committee.

It happened that at the time there were several members of the committee who were not much interested in their particular committee work or who were absent from Washington. I recall the efforts of the members of the committee to maintain sober faces as the chairman advised the advocate of the bill that he thought it would be best to give him a sub-committee and proceeded to name as members of the sub-committee five representatives who would be most unlikely ever to hold a meeting, much less give consideration to the question.

The new member of Congress thanked the committee as earnestly as though a real favor had been done him and after he retired, the door of the committee room had hardly closed when the

members of the committee by their uproarious laughter assured the chairman that they saw through and approved of the little joke that he had played.

What I have said with regard to the sub-committees of the Congress has relation more to the present and to the last few years than to earlier periods, though in general it will hold good for a period of many years. The fact, however, that one committee is organized upon one basis during a given session is no guarantee that the same basis of organization will be made use of in succeeding sessions. For instance, the committee on interstate and foreign commerce in the present Congress has ten sub-committees, each of which has to do with fairly different work, yet during the time Hon. W. P. Hepburn was its chairman there was but one standing sub-committee, that on "Aid to Navigation," and when the committee was under the leadership of the present minority leader of the House, Hon. James R. Mann, there were no standing sub-committees, but, on the other hand, while select sub-committees were at times appointed, Mr. Mann held firmly to the conviction that the matters for the consideration of the committee could best be handled mainly through the deliberations of the committee's entire membership.

The whole question of the advisability of maintaining sub-committees is open to debate and there are those who would abolish all, or practically all, sub-committees and insist upon the committees of the Congress being the smallest units for the handling of the work.

In my judgment, while there may be measurable merit in this contention, there are committees of the Senate and of the House where it would be utterly impossible for senators and representatives to perform their duties in manner that would be creditable by paying first attention as members of the full committees to all matters, all hearings, and to the shaping in detail of all legislation coming before them.

The members of such committees must divide their work by referring it to sub-committees and then from time to time meet as members of full committees and consider the advice of the members of the sub-committees who have given the subjects their special attention.

APSN, 4 (1915)

LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director of the Bureau of Legislative Information of Indiana

Some Phases of Injunction Legislation 1913-1914. Within recent years it has been found that, whatever objections may be urged against the indiscriminate use of the injunction as a means of postponing or preventing an obviously beneficial and natural sequence, it can be turned by statutory enactment into an instrument for public good. It has been proved in the statutory law that the injunction is a two-edged sword which may be employed as well by the States to prevent the violation of useful laws as it previously was employed by the beneficiaries of a laissez faire policy to prevent their enforcement.

Likewise, the use of the injunction as a means of staying the operation of useful laws or restraining and curtailing the rights of certain classes, especially organized labor, has been greatly circumscribed and limited by statute. There is no doubt that the injunction has been, and will continue to be, where statutory limitations of its use are neglected, a very effective aid to employers and a very serious obstacle to workingmen in labor disputes.

Perhaps the abatement and injunction acts for which Iowa furnished the model as long ago as 1909 represent the first appeal to the injunction as a process for summary dealing with statutory violation that cannot be reached effectively in any other way. The public service commission law of California of 1911 and the public service commission acts of Missouri, Pennsylvania and West Virginia are examples of those acts which specifically clothe the regulatory body with power to proceed against law violators, actual or threatened, by means of the injunction. The use of the injunction to prevent the violation of the New York pure mattress law and a law relating to the conversion of military property to unlawful uses was authorized by the 1913 legislature. Another statute of the same session empowers the court having jurisdiction to enjoin an assignee from interfering with the assignor's property in general assignments. Still another act of the 1913 session of the New York legislature confers on certain per-

sons and associations the right to maintain in the name of the State an action to enjoin a nuisance. In the same way, the injunction is now used to prevent the violation of housing acts in two States especially, Massachusetts and California.

Section 2 of the Iowa abatement and injunction act of 1909, in the main is typical of all the laws since enacted on that subject, especially the laws of Wisconsin, Utah, Oregon, Minnesota and Kansas. The provisions of the different States differ somewhat in detail but essentially they are the same.

The Iowa abatement and injunction act provides that: "Whenever a nuisance is kept, maintained or exists, as defined in this act, the county attorney or any citizen of the county may maintain an action in equity in the name of the State of Iowa upon the relation of such county attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists."

The statute authorizes a temporary writ upon the presentation of a petition therefor and a reasonable showing of facts. Three days' notice in writing is given to the defendant and the issuance of the writ follows as a matter of course. Any violation of the injunction within the judicial district where it is issued is punishable as contempt of court.

No preliminary injunction or restraining order can issue without notice under the Oregon act but a hearing must be held within five days after notice to the defendant. Kansas, however, permits the injunction to be granted at the commencement of an action and no bond is required. In this State the punishment for contempt is a fine of not less than \$100 or more than \$500 and imprisonment in the county jail for not less than thirty days or more than six months at the discretion of the court.

The Missouri public utility commission act of 1913 contains three sections, each devoted to a different class of public utilities and conferring upon the commission the right to employ the mandamus or injunction to compel the public utility to do what it is by law failing or omitting to do or to prevent the public utility from doing anything contrary to or in violation of law or any order or decision of the commission. The Missouri act makes it the duty of the general counsel to the commission to begin an action for mandamus or injunction by a petition to the court alleging the violation complained of. The defendant has thirty days in which to answer, after which the court "shall immediately in-

quire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement." Parties other than the public utility in question may be joined as parties to the petition in order to make the order, judgment or writ of the commission effective.

Pennsylvania's public service commission act of 1913 contains the following provision: "Whenever the commission shall be of the opinion that any public service company is violating or is about to violate any provision of this act; or has done or is about to do any act, matter, or thing herein prohibited or declared to be unlawful; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect or refuse, to perform, any duty enjoined upon it by this act; or has failed, omitted, neglected, or refused or is about to fail, omit, neglect, or refuse, to obey any lawful requirement or final order made by the commission; or any final judgment, order, or decree made by the court of common pleas of Dauphin county, or by the supreme court—then, and in every such case, the commission may, by its counsel or assistant counsel, institute in the name of the commission, in the court of common pleas of Dauphin county, injunction, mandamus, or other appropriate legal proceedings, to restrain such violations of the provisions of this act, or of the orders of the commission, and to enforce obedience thereto; and the said court of common pleas is hereby clothed with exclusive jurisdiction throughout the commonwealth to hear and determine all such actions."

Three New York acts of 1913 employ the injunction for preventing the illegal manufacture or sale of mattresses, the unlawful conversion of military property, the unlawful use of the name of a military or naval organization and the unlawful interference with the assignor's estate in cases between debtors and creditors. In the first case, the commissioner of labor, who has charge of the enforcement of the pure mattress law, through the attorney general may sue for and obtain an injunction restraining any person from manufacturing or selling an article in violation of the law. In the second case, an injunction may issue upon notice to the defendant of not less than five days. In the third case, no period is fixed to limit the time after which an injunction may issue.

An amendment to the New York public health act of 1913 in relation to the suppression of certain nuisances no doubt follows the procedure of the abatement and injunction acts. It seems certain that the injunction is to become more popular as a means of restraining the violation of this class of legislation.

Organized labor has led the fight to restrict the use of the injunction in disputes between capital and labor. A Kansas act of 1913 and a Massachusetts act of 1914 indicate that the opposition of organized labor is gaining some headway. Heretofore, the injunction has been employed to prevent labor boycotts and workingmen from going on a strike. Only the immediate and irreparable injury to property or the rights of the complainant justifies a temporary restraining order without notice under the Kansas and Massachusetts acts and then only when "the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon." But every such order, according to the Kansas act, "shall be endorsed of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record."

An amendment of 1913 to the Montana code of 1907 provides that: "An injunction cannot be granted in labor disputes under any other or different circumstances or conditions, than if the controversy were of another or different character, or between parties neither or none of whom were laborers or interested in labor questions."

While the New York housing law of 1913 applying to cities of the second class provides that "no preliminary injunction shall be granted against the health department or its officers except by the supreme court or a justice thereof after service of at least three days' notice, together with copies of the papers upon which the motion for such injunction shall be made," the California and Massachusetts housing acts of 1913 go much further and confer upon persons interested in the enforcement of the laws the right to employ the injunction to prevent law violation. Section 86 of the Massachusetts act confers upon equity courts, upon application of the city solicitor, building inspector or board of health, the right to "restrain the construction, alteration, repair, maintenance, use or occupation of a building or other structure in violation of the provisions of this act and to order its removal or abatement as a nuisance, and to compel compliance with any provision of this act." The California act confers essentially the same power upon the superior court.

Under the Wisconsin railroad commission act of 1907, "no injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing." This provision has since been re-enacted and the original limitations amplified to considerable detail. The Indiana and Illinois public service commission acts of 1913 contain similar provisions. The provision of the Arizona act of 1912, restricting the right to use the injunction to set aside the order, regulations or decrees of its corporation commission, is perhaps the most sweeping of all. Section 2344 of the Revised Statutes of 1913 provides: "No order staying, restraining or suspending any order, rule, regulation, charge, or decree of the commission shall be made in any court of this State."

All this legislation indicates the present extremes to which lawmakers have gone to eliminate the most objectionable abuses of the injunction and at the same time, by the statute law, to reinvest the process with an important function in law enforcement. The statute law has been resorted to as a means of restricting its use in strictly class warfare and in those cases where the public is entitled to the presumption of constitutionality when an act of its legislatures or a judgment or decree of its legally constituted servants is attacked. The theory of the injunction as an extraordinary remedy can hardly be assailed with success, particularly when we recall its original function, viz.: "An injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience."¹

It is the abuses tolerated under this broad vestment of power to which the most serious objections are patent. When these abuses have been provided for, we may expect a considerable diminution in the unpopularity of the injunction, especially as it is more and more used to put teeth into beneficial laws.

CARL HENRY MOTE.

The State as a Lobbyist. The New York legislature of 1914 passed an act which creates a state commission for the purpose of promoting federal legislation on the subject of the alien insane. The law provides that the commission consist of three members and be appointed

¹ Jeremy, Eq. Jur. 307.

by the governor. The commission was directed to meet within ten days and to organize by the election of a chairman and secretary. An appropriation of \$2500 was made to pay the actual and necessary expenses of the commission.

The commission was directed to urge upon the president and congress of the United States the immediate enactment into law of the recommendations set forth by the governor of New York and the legislature on the subject of the alien insane together with such other and further amendments to the federal laws as the commission may deem necessary or advisable.

The commission is further directed to secure the coöperation of other States affected by or interested in the matters pertaining to the alien insane to the end that all necessary amendments to the federal laws may be secured forthwith.

The creation of this commission was the result of an investigation concerning the condition of the alien insane in New York State. This report was submitted by the governor to the legislature in February, 1914, together with a special message and the legislature passed a concurrent resolution urging federal legislation to prevent immigration of insane aliens. Subsequently, the law creating the commission was enacted.

Interstate Commerce—Intoxicating Liquors. An important change was made in the relation of state and federal legislation on the subject of interstate commerce in intoxicating liquors by the passage of the Webb-Kenyon act in March, 1913, which was entitled "An act divesting intoxicating liquors of their interstate character in certain cases." This act provided that the "shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind from one State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof or from any foreign country into any State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold or in any manner used either in the original package or otherwise in violation of any law of such State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof are hereby prohibited."

The bill was vetoed by President Taft in the closing days of his term, on the constitutional ground that congress could not divest itself of the power over interstate commerce and could not grant to the States the right to prohibit liquor as a commodity of interstate commerce. The objections were not sustained by the congress and the bill was passed over the veto of the President.

This law had for several years been the goal of the prohibition forces. Prohibition and local option laws had been frequently nullified by the lack of power on the part of States to prevent shipment from other States into dry territory. The Wilson act of 1890 had helped a little to overcome the difficulty with its provisions that shipments in interstate commerce upon crossing State lines should be subject to State laws, enacted in the exercise of police powers to the same extent as if the liquor had been produced in the State. The Wilson law was upheld by the supreme court in 140 U.S. 555. The greater ease of preventing shipment into dry territory, over preventing sale within dry territory led to the present law.

Immediately following the enactment of the law, the States began to take advantage of the power conferred and in some cases anticipated the passage of the law. Kansas passed an act, before the enactment of the law by congress, prohibiting any person or common carrier from bringing liquor into the state or from transporting it within the State, except for lawful purposes. If brought in for lawful purposes a record must be filed by the carrier showing the nature of shipment and quantity. The law declared that the act should be construed in harmony with all federal statutes on the subject of interstate commerce in intoxicating liquors.

Florida was the first to take direct advantage of the Webb-Kenyon act and at the session the summer following (L 1913 p. 372) passed a law reciting the new federal act and prohibiting shipment into dry territory of any liquor intended for unlawful sale. Liquors shipped in violation of the law were made subject to seizure and destruction from the time of their arrival within the State.

The Tennessee act passed at a special session in October, 1913, prohibits the shipment into the State or shipment within the State of any intoxicating liquors except as provided by the act. The law requires that carriers keep a record of shipments which must be filed in the office of the county clerk. The record must show the purchaser, time of purchase and purpose for which ordered. The law expressly authorizes the purchase for personal use of quantities less than one gallon,

and the benefits of the law consist primarily therefore in the record kept in the county clerk's office. Substantially the same law was passed in Mississippi in 1914. Both States though prohibition States, expressly authorize shipments intended for personal use.

Texas at the special session in 1913 passed a law similar to the others prohibiting shipment of liquors from a point in any other State and consigned to any consignee in dry territory to be used for unlawful purposes.

Many laws in attempting to regulate shipments of liquor into dry territory had inadvertently come up against the constitutional barrier of interfering with interstate commerce. Other laws frankly raised the issue by prohibiting all shipments whether interstate or intrastate, and were declared unconstitutional, the most recent case of this kind being the provisions of the dispensary law of South Carolina which sought to prohibit shipments into the state for personal use. This was declared void in 78 S.E. 516.

In the meantime the federal act has been assailed in the courts growing out of the passage of State laws and cases are pending in the United States supreme court involving the validity of the act.

The first important point was won by the friends of the law in the case of *State vs. United States Express Co.* (Iowa) 145 N.W. 451. In this case the court held that the manufacture, sale and transportation of intoxicating liquor is subject to regulation and prohibition under the police powers of the State and that congress has the power to prohibit the shipment of intoxicating liquor into a State having the prohibitory law and thereby take such liquor out of the sphere of legitimate interstate commerce. It is held that the act simply removes the bar existing to the enforcement of police regulations by the State, because of the interstate character of the transaction. Congress did not use terms of permission to the States to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition. One of the important holdings in this case was to the effect that after the Webb-Kenyon act was passed, it was not necessary for the State to re-enact its laws, regulating the sale and transportation of liquors. All State laws prohibiting shipment of liquor into dry territory are thus under this decision made to apply automatically to interstate shipments in the same manner as they have formerly applied to intrastate shipments.

AOSR, 4 (1915)

Constitutional Amendments and Referred Acts, November Election, 1914. At a time when the principle of direct legislation is attracting much attention and has met with wide acceptance, a review of the extent to which that institution was made use of at the elections in November, 1914, should possess some measure of interest. This review covers both constitutional amendments and statutes and includes five classes of measures presented for approval: Amendments proposed by legislatures; amendments proposed by initiative petition; statutes referred to the people by legislatures; statutes passed by legislatures and coming to the electorate on referendum petition, and statutes proposed by initiative petition.

Referenda were taken in thirty-two States on 287 propositions, of which number 120 were approved. Of the total number of measures, it is a notable fact that more than 50 per cent are offered in the six States of California, Oregon, Arizona, Louisiana, Colorado, and Missouri. In twenty-eight of these States there were constitutional amendments pending and in fifteen there were statutes voted upon. Of the 200 constitutional amendments proposed, 90 were adopted and of the 87 statutes, 30 were approved. California easily leads with 48 propositions followed by Oregon with 29.

With reference to amendments alone, California led with 30, followed by Oregon and Louisiana with 17 each. The 33 amendments proposed on initiative petition were distributed among six States, among which Oregon led with 10. Among the amendments presented, 49 per cent of those referred by legislatures, and 21 per cent of those referred by initiative petition were approved.

A question as to the discrimination exercised by the voters is raised by the fact that in thirteen States where more than one amendment was offered, the amendments proposed were either all accepted or all rejected without exception. It would appear that greater discrimination was exercised in the case of measures coming directly from popular initiative than in case of those coming from the legislatures. It is true, as would be anticipated, that amendments were more numerous in those States whose constitutions contain much statutory matter.

With respect to laws referred, California led again with 18, followed by Arizona and Oregon with 14 and 12 respectively. As to the method by which the laws were brought to a referendum, it appears that initiative petition was responsible for the appearance of the largest number. It should be noted that the vote on the two laws referred by the legislature in Vermont, was not mandatory but was advisory only.

Constitutional amendments and referred laws may perhaps best be considered separately when viewed with reference to subject matter.

Giving attention first to constitutional amendments, it appears that local government and local finance includes the largest number of measures, followed in order by finance and taxation, the judicial department, and public works. Likewise the same group contains the largest number adopted, followed in this case by finance and taxation and the judicial department. Naturally, measures affecting the organization of government are more numerous among the amendments than among the referred acts while the latter class includes a greater number of measures of a social and economic character. It is likewise found that measures affecting governmental organization were more often proposed by legislatures than by initiative petition.

The most radical proposals with respect to the legislature were one in Oregon to abolish the senate, and another in the same State to elect the members of the legislature at large; neither was successful. Five amendments affected the salaries and expenses of the members, but in no case apparently to reduce them, and in no case were they approved. It may be noted that the measures affecting salaries all originated with the legislatures while the Oregon proposals above mentioned were the product of initiative petition.

A proposal to lengthen the legislative term in Georgia was approved, but a similar measure was defeated in South Dakota. A revision of legislative apportionment was approved in Mississippi, but defeated in Minnesota.

Louisiana voted to increase the salary of the governor but Nebraska refused to do the same for all its executive officers. Nebraska refused, also, to make the term of the governor two years as did Oregon to create the office of lieutenant governor. In New Mexico the term of executive officers was fixed at two years and they were made ineligible for a succeeding period of two years but in Idaho the same officers were refused an extension of term to four years.

In a series of seven amendments Mississippi revised its judicial system, making its supreme court elective for a term of eight years. Florida voted to reorganize its judicial department while Idaho and Minnesota decided not to increase the number of their highest court. Georgia found it necessary to resort to constitutional amendment to increase the salary of a judge in a single county. While in Mississippi henceforth, nine jurors may render a verdict, a similar concession was denied in Colorado and Nebraska refused the same privilege to ten jurors.

California sought to expedite justice by limiting the granting of new trials upon error.

Equal suffrage was voted upon in seven States: Nevada, Montana, Nebraska, Missouri, North Dakota, Ohio and South Dakota, but was unsuccessful in all but the first two. Louisiana refused to sanction office holding by women even in positions connected with education and public institutions. Michigan provided for absent voting. Plurality elections and preferential voting failed of approval in California.

Two amendments introducing the initiative and referendum in North Dakota in respect to constitutional amendments and with respect to laws were approved but similar measures in Mississippi, Minnesota and Wisconsin failed of approval. Likewise an amendment directing the Texas legislature to enact a law introducing these features in that State failed. Arizona strengthened this agency by voting that measures adopted by initiative and referendum could not be amended, vetoed or repealed except in the same manner. On the other hand, attempts to abridge the use of the same devices were defeated in Colorado, Missouri, and South Dakota. The recall was adopted in Louisiana and Kansas but rejected in Minnesota and Wisconsin.

The substitution of a classified system of taxation for the general property tax was proposed in seven States: Kansas, Nebraska, North Carolina, Ohio, Oregon (two amendments) and North Dakota, but was approved only in the last instance. Oregon also rejected a proposal reaffirming her adherence to the general property tax coupled with a \$300 exemption. New Mexico voted to revise her taxing system. Measures were approved permitting exemptions of educational institutions and shipping in California, and canals and money on hand in Louisiana, but a proposal to exempt property to the value of \$1500 was rejected in Oregon. Special taxes were proposed in six instances, but save for a tax on foreign banks and a permissive one in aid of local fire departments, both in Louisiana, all were rejected.

Eleven successful proposals in the field of local government were local measures relating to individual counties or cities in Georgia and South Carolina. Measures granting or extending home rule privileges were voted on in California, Missouri, and Wisconsin but were approved only in California. Attempts to limit municipal indebtedness in certain particulars were defeated in Arizona, California, Colorado, and Missouri.

Power to issue municipal bonds for special purposes was denied in Louisiana, Missouri and Oregon. In California, Florida, Georgia,

Missouri, New Mexico, and Oregon changes in the machinery of local government were under consideration. Two measures each in California and Oregon looked toward the union of cities or the consolidation of county and city government but union of county and city in the latter State failed of approval.

Irrigation, reclamation and water conservancy were under consideration in California (two amendments) where they were adopted and in Arizona, South Dakota and Washington where they were rejected. Authorization of State or local indebtedness for highways was sought in North Dakota, Arizona, Michigan, Missouri (three propositions) and Minnesota, but was granted only in the first case. A drainage measure was approved in Louisiana but disapproved in Michigan. State elevators were approved in North Dakota and a municipal canal in Louisiana, but the construction of sea walls and reclamation projects by counties was disapproved in Texas. Power of excess condemnation for public improvements was denied in both California and Wisconsin.

California disapproved of non-partisan nominations of delegates to constitutional conventions as did Colorado an amendment to change the manner of proposing and publishing amendments. A like fate befell two proposals in Wisconsin prescribing a shorter method of amendment and obliging the legislature to submit on petition amendments to the people for approval.

North Carolina refused to forego the practice of creating corporations by special act. California arrived at an adjustment between State and locality of the control of public utilities. In Colorado an attempt to declare newspapers public utilities was defeated. Labor matters like most other topics in the field of social and economic reform were much more frequently the subject of statutory than constitutional proposal, though constitutional sanction was sought and granted for compulsory State insurance for workingmen in Wyoming and for minimum wage legislation in California. The fixing of an eight-hour labor day in the constitution of Oregon was defeated. Two measures permitting the State to enter the general insurance business were rejected in Wisconsin. The anti-alien land question was suggested by an unsuccessful proposal to permit aliens to own land in municipal corporations in Washington, if residents, but forfeiting the same upon five years non-residence. Educational proposals were chiefly statutory but South Carolina placed her school for the deaf under the benefits of the land grant fund, and Louisiana permitted a bond issue for New Orleans schools. North Carolina sought in vain a constitutional requirement of

a six-months school year. The general disapproval of all amendments in North Carolina extended even to verbal changes such as the proposed excision of certain temporary provisions applicable only at the time of taking effect of the constitution, and the substitution of the words "War between the States" for the words "insurrection or rebellion."

Constitutional State-wide prohibition was submitted in five States: Arizona, Colorado, Oregon, California, and Ohio and was successful in the first three. Ohio voted to confine local option to the smaller areas of township and city rather than the county. In Arizona and California the opponents of prohibition vainly sought to cast an anchor to windward by proposing that the subject be not voted on oftener than once in eight years, and in the latter State also that if prohibition should be adopted it should not take effect until a certain number of months had elapsed.

If attention now be directed to the statutory measures presented for direct action, the number relating to matters of governmental structure appear relatively few. The single act relating to the legislature is a proposal submitted by the legislature of Oregon to increase its own pay. The request was denied. Initiative acts would abolish one administrative board in Oregon and consolidate two others, and abolish the bureau of inspection of public offices in Washington. None were approved by the people. An initiative act for a non-partisan judiciary in Oregon was likewise rejected. The Massachusetts legislature submitted an act abolishing the party enrollment feature of their primary law. The Vermont legislature submitted two primary election measures for an advisory referendum. Both the Massachusetts and the Vermont acts were approved. South Dakota rejected a revised primary law as did California an act to permit absent voting. Oregon rejected a proposal to legalize primary elections of delegates to recommend names to be voted on at primary elections.

In the realm of finance California voted on four bonding propositions of which two, for State buildings at San Francisco and Sacramento, were approved. Two bond issues were rejected in Oregon. Arizona proposed to allow each owner to assess his own property for taxation, the State reserving the right to take the property at such valuation but this failed of approval.

Three Arizona acts related to counties and county seats and two Missouri acts would have, had they been approved, extended the home rule privileges of certain cities.

Oregon refused to endorse a proposition to permit the building of

municipal docks. A somewhat comprehensive initiated act in Arizona was approved abolishing State contracts for labor, authorizing a state printing plant and a banking system. California created a water commission and approved an issue of bonds for the improvement of San Francisco harbor. Colorado voted a mill tax for highways. Washington refused to create an irrigation board and to make an appropriation for irrigation.

California, Indiana and South Dakota all declined to approve proposed constitutional conventions.

Corporations, utilities and securities were a favorite subject of statutory referenda. The public utilities act of Maine was approved but certain sections of the Colorado act were disapproved. Arizona ratified a three cent fare act of the legislature but Missouri rejected a "full crew" act of her legislature. A "blue-sky" law by the legislature was approved in California but similar acts initiated by petition in California and Washington were rejected. Colorado refused to undertake the regulation of commission merchants as proposed by the legislature. Teachers pensions were disapproved in Washington but old age and mothers pensions were adopted in Arizona along with the abolition of almshouses.

Statutes relating to labor were offered in profusion usually by initiative petition. Eight hour day laws for males and females were disapproved in California and Washington as was a similar law for women in Oregon. Massachusetts approved a half-holiday on Saturday for laborers for the State. One day of rest in seven was defeated in California. Arizona approved an anti-blacklisting act and an act prescribing electrical constructions in the interests of safety, and also a law prescribing that at least eighty per cent of the laborers employed by any person employing over five workmen shall be native born or voters. Washington forbade the taking of fees by employment agencies. Colorado declined to create an unpaid child welfare commission.

Nebraska approved a Workmen's Compensation law but Montana refused to do so. Colorado modified its liability law but Washington refused to approve an act requiring first aid by the employer to the extent of one hundred dollars.

Montana approved a system of State loans on farm lands, and California adopted the Torren's system of land registration.

In educational legislation Montana refused both to increase the school tax levy and to consolidate the State colleges and Nebraska declined to remove and consolidate its university as proposed by the

legislature. A State bond issue for buildings at the University of California was approved.

Oregon abolished the death penalty though Arizona refused to do the same. Arizona approved a pardon and probation system but Colorado rejected a probation law. Washington alone undertakes to inaugurate prohibition by an initiative statute. California voted to prohibit prize fights though Montana refused to do the same with boxing exhibitions. California also approved a legislative red light abatement act.

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Administration of Minimum Wage Laws in the United States. Nine States now have minimum wage laws, California, Colorado, Massachusetts, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin. The Massachusetts law was passed in 1912. The other States followed in 1913.

California, Oregon, and Washington have an industrial welfare commission of five, three and five members, respectively. These boards are given broader powers than the other commissions in that they have charge of the hours and conditions of labor as well as the minimum wage. Colorado has a State wage board of three members. Massachusetts, Minnesota and Nebraska have a minimum wage commission of three members. In Utah the law is administered by the commissioner of immigration, labor and statistics, and in Wisconsin by the industrial commission, boards already in existence.

Since the jurisdiction of these boards is only over the wages of minors and of adult women, there is usually a provision for a woman member on these commissions. In California, Colorado, Minnesota and Nebraska at least one member must be a woman. In Massachusetts a woman may be a member, and in the other States no definite provision is made. In California and Massachusetts this is the only provision concerning membership. In other States additional requirements are made. In Colorado one member shall be a representative of labor, and one an employer of labor, in Minnesota one must be an employer of women; in Oregon the members shall be selected so far as possible so that one will represent the interests of the employing class, one the interests of the employed class, and one will be fair and impartial between employers and employed and will work for the best interests of the public as a whole. In Minnesota and Nebraska provision is made for ex-officio

members; the commissioner of labor being a member in the former, and the deputy commissioner of labor, and one member of the political science department of the University of Nebraska being members in the latter. The governor is also ex-officio member in Nebraska in addition to the three provided for in the law. Washington alone is peculiar in its provisions concerning membership. Instead of attempting to secure representatives of the employers and employees, the law specifically provides that no person shall be eligible to membership on the commission who has within five years been a member of any manufacturers' or employers' association or of any labor union.

In none of the States do members of the commissions receive a salary, except in Minnesota where the appointed woman member is secretary of the commission and receives a salary of \$1800, and except, of course, in Utah and Wisconsin where pre-existing boards administer the law. In California and Massachusetts, the members receive a per diem fee of \$10 for actual service. In all the States the appointive members are selected by the governor, and receive their traveling expenses, and may hire a secretary and clerical assistance.

The first duty of the State commission is to inquire into the wages paid in any industry and to ascertain the lowest amount that can be considered a living wage. Such investigations are mandatory in seven of the States. The power to investigate is discretionary in Oregon and Minnesota, but becomes mandatory in the latter State upon the petition of not less than a hundred persons employed in any industry or occupation in which women and minors are employed. The various laws define a minimum wage, the general principle being "the necessary cost of living and to maintain the worker in health."

In order to provide the commission with material on which to base its investigations most of the laws require that the employers shall keep a record of the name and address and age of persons employed. The laws also give the commission power to issue a special license to defective or physically incapacitated persons, or to learners or apprentices to work for a sum less than the minimum wage, but such licenses usually are not for more than six months.

If after an investigation the commission finds that women and minors in such occupation are receiving less than the minimum deemed necessary, two courses are open. The commission may, after holding a public hearing, determine upon a minimum wage rate, or it may establish a subordinate wage board. There is a subordinate board for each industry considered, except in Wisconsin where industries may be classified for the purpose. These subordinate boards are mandatory

only in Wisconsin, and in Massachusetts and Nebraska in so far as wage rates for women are concerned. Colorado alone has no provision for such a board. In determining the wage for minors no such advisory board is required. Careful provision is made in most of the States to secure fair representation of employers and employees on the subordinate wage boards. In California, Massachusetts, Minnesota, Nebraska, Oregon and Washington, it is definitely provided that there shall be equal representation, though the exact number is left to the discretion of the commission. In Wisconsin the provision is that the wage board must be so constituted as to fairly represent employers, employees, and the public. In Massachusetts, Minnesota, Nebraska, Oregon, Washington, and Wisconsin it is required that disinterested people shall represent the public. In California, Nebraska, Oregon and Washington a member or members of the commission are members of the wage board. In Minnesota it is required that at least one-fifth of the board shall be women, but this provision is hardly necessary since subordinate wage boards are required only for determining the wages of adult women, and their representatives would probably be women.

These subordinate wage boards are purely advisory in character. The commission prescribes rules for the selection of representatives and for the procedure of the board, except only in Minnesota where it is provided that representatives shall so far as possible be chosen by election from the employers and employees respectively. These subordinate boards have powers of investigation, either conferred upon them by law or by the rules of the commission, and their chief function is to consider the reports of the investigations of the commission, hear testimony, and reach an agreement on the minimum wage rate which should be set.

In case a subordinate wage board is created, the procedure is as follows:—The commission submits the results of its investigations to the subordinate board which may thereon agree upon a minimum rate or may ask for further investigation. When the wage board has agreed upon a rate its recommendations are submitted to the commission which may return the recommendations to the subordinate board for further consideration, or may call another board. If the commission approves the recommendations it must hold a public hearing and then establishes a minimum rate by issuing to the employers orders.

In all the States except Massachusetts and Nebraska the final ruling of the commission, promulgated in the form of orders to the employers, is mandatory. In these two States the law depends for its force solely upon public opinion. The commission is given authority to publish the

names of all employers who refuse to pay the minimum wage decided upon by the commission. Such publicity is the only power behind the commission's recommendations. In all the other States it is made a misdemeanor either to violate the rulings of the commission by paying less than the minimum rate set, or to discriminate against any employee who has given testimony before the commission or wage board. Such violation of the law is prosecuted as in the case of other misdemeanors and a fine is set, including the possibility of imprisonment in some States. In Minnesota, Oregon and Washington it is definitely provided that an employee who has been paid less than the minimum rate, after the ruling of the commission, may recover from her employer by civil action the total amount due her, including costs and attorney fees. And this provision has been carried out in those States.

The power of the court to review or set aside the decisions of the commission is variously restricted. In California, the employer must appeal within twenty days, and the court may only set aside the determination of the commission in case it finds that the commission acted without or in excess of its powers, or if the determination was procured by fraud. The findings of fact made by the commission are, in the absence of fraud, conclusive. In Colorado the employer may appeal to the court on the grounds that the decision of the commission is unlawful or unreasonable, but the evidence considered upon such appeal must be confined to the evidence presented to the board in the case from the decision of which the appeal is taken, and the order of the board remains in full force until the order is reversed or set aside by the court. In Massachusetts an employer may file with the court a declaration on oath that compliance with the commission's ruling would make it impossible for him to conduct his business at a reasonable profit. The court may review the recommendations of the commission and may issue an order restraining the commission from publishing the name of that employer if the court sustains his declaration. Nebraska is almost identical in this respect with Massachusetts, except that the declaration required states that compliance would endanger the prosperity of his business. Review in both cases is under the rules of equity procedure.

In Oregon there is no appeal from the decision of the commission on questions of fact. Appeal may be taken to the circuit courts on questions of law.

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The Reorganization of County Government in 1913 and 1914. The question of reorganization of county government has gained sufficient attention to cause concerted efforts toward a regeneration of the various county systems now in vogue. Legislation was enacted or proposed in several States in 1913 and 1914 on phases of this subject. New York made provision¹ by an act of the 1914 legislature for the appointment by the boards of supervisors in any county adjoining a city of the first class, of a commission of taxpayers not exceeding seven in number who are to serve without compensation. The commission is to examine the State laws applicable to the county and the advisability of changing methods and forms of county governments, and investigate the form of government of other cities and counties for the purpose of recommending an improvement in the government and welfare of the people of the county. A report of its investigation, findings, and recommendations are to be made to the board of supervisors of such county. Expenses of the commission in such cases are paid from a tax levied by the supervisors or from other sources.

The movement for county home rule in California offers a possible solution of the county problem. By the adoption of a constitutional amendment² permitting freeholders' charters for counties, any county may frame a charter for its own government consistent with and subject to the State constitution, by the election of a board of fifteen (15) freeholders or by petition signed by fifteen per cent of the qualified electors. The proposed charter must be published for ten (10) days and submitted to the county electorate in not less than thirty (30) nor more than sixty (60) days after the completion of publication. It must be adopted by a majority of the votes cast and before it becomes fully operative, must be ratified by the next succeeding legislature.

Certain provisions relating to boards of supervisors are required to be incorporated in the charters and certain additional provisions may be made in the charter, among others for the care, construction, maintenance, repair, inspection, and supervision of roads, highways, and bridges, with certain limitations as to the formation of districts and the voting of bonds.

Two counties in California have taken the opportunity to inaugurate new charters, namely: San Francisco³ and San Bernardino⁴ counties.

¹ L. 1914, c. 324, p. 921.

² L. 1911, c. 64, p. 2168.

³ L. 1913, c. 5, p. 1484.

⁴ S. L. 1913, c. 33, p. 1652.

The San Bernardino charter provides for the appointment by the board of supervisors of all the county officers, eliminates the fee system, and sets the salary schedule. An amendment has been proposed which provides for the election of a number of the officers instead of the appointment of all of them by the board. This will require a three-fourths vote of the electorate.

The important features of the San Francisco charter may be enumerated.

a. The supervisors—who must be elective under the constitution—the sheriff, the district attorney, and the assessor are chosen by the people. The auditor, the coroner, the county clerk, the public administrator, the recorder, the surveyor, the tax collector, and the treasurer are appointed by the board of supervisors from an eligible list prepared by the civil service commission.

b. The number of deputies, clerks, and attachés in office is fixed by the supervisors, under the charter. Heretofore they were prescribed by the legislature.

c. The justices of peace and constables were formerly elective. Under the charter, the justices remain elective, but the constables are appointed by the sheriff from a list of eligibles prepared by the civil service commission.

d. Constables are made deputy sheriffs, ex-officio, and constitute a constabulary department with the sheriff at its head.

e. All salaries are fixed by the supervisors except the salaries of the supervisors which are stated in the charter, and the salaries of officers and employees of the civil service commission. All fees must be turned over to the board.

f. A short elective list and biennial election of officers has the advantage of a short ballot.

g. The creation of a road department with a road commissioner to act under the rules and regulations of the board of supervisors is a new feature.

h. An efficiency board, a civil service commission, and the recall of elective and appointive officers are entirely new provisions.

A plan for organizing and separating the relations of cities and counties known as the county-city plan is being adopted by some of the States.

A constitutional amendment proposed in Oregon provides for a board of directors of three or more to hire a county business manager to hire all the other county officers. The county directors are to

receive no salary, aside from the expense incurred by the office. The board is to lay out general plans for county business and see that the manager is efficient and faithful. The amendment was defeated however at the polls in November, 1914.

The Maryland legislature of 1914 passed an act proposing a constitutional amendment permitting home rule in the city and county of Baltimore.⁵ Upon the demand of the mayor of Baltimore and the city council or on petition of 20 per cent of the registered voters, the board of election supervisors are required to provide for the election of a charter board. If a majority be in favor of the creation of a board, the eleven nominees of the city of Baltimore or the five nominees in the county, receiving the largest number of votes, constitute the charter board. The board is required to prepare and report a charter within six (6) months to the mayor of Baltimore or president of the board of county commissioners. This charter is to be published within thirty days after the report, and submitted to the voters at the next election. If adopted by the people, the charter is to be subject only to the constitution and public general laws of the State.

Every charter adopted under this section is to make provision for a legislative body and a chief executive officer which shall have full power to enact local laws including the power to repeal or amend local laws enacted by the general assembly upon all matters covered by express powers granted. Amendments may be proposed by the mayor and city council of the city of Baltimore or the county council, or by petition signed by not less than 20 per cent of the registered voters of the city or county. The manner of publication and submission of a charter amendment is the same as in the case of a charter.

The classification of counties under a general county law which allows for differences in the number of officers and salaries, has been introduced in some States to relieve the legislature of a large amount of local legislation which would otherwise be fixed at each session.

The California legislature⁶ proposes a constitutional amendment relating to the creation of municipal corporations by general law instead of special laws. Cities and towns organized under this provision may provide for the performance by county officers of certain municipal functions, whenever the discharge of such municipal functions by county officers is authorized by general laws or by the provisions of a county charter framed under the constitution.

⁵ L. Md. 1914, c. 416, p. 657.

⁶ L. 1913, c. 90, p. 1732.

Montana amended an act of the 1907 legislature by an act⁷ in 1913 which provides for the classification of counties. This law enumerates the number of county officers, and fixes the compensation of such officers according to the classification. This classification, based upon population, divides the counties into eight different groups; the officers and salaries of each group are enumerated.

Wisconsin⁸ made an attempt to provide for an optional commission plan of government for all counties except those having 250,000 population or more following the general law relating to the commission form of government for cities. This bill did not pass the legislature of 1913.

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⁷ L. 1913, c. 109, p. 451.

⁸ Assembly bill no. 808 was passed by the Assembly 36 aye, 40 no. 24 not voting, 6/11/13. Senate refused concurrence. 1/23/13.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY JOHN M. MATHEWS

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At the November meeting of the Executive Council of the American Political Science Association, it was voted to discontinue the publication of the annual volume of *Proceedings*, to enlarge each issue of this REVIEW to approximately 220 pages, and hereafter to publish in the REVIEW such of the papers read at the annual meetings of the Association as may seem desirable in the opinion of the Editorial Board of the REVIEW. In this issue appears the presidential address of Prof. J. B. Moore.

THE ELEVENTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

The suspension of the publication of the annual volume of *Proceedings* seems to render desirable in this place a brief résumé of the proceedings at the recent meeting of the Association held at Chicago from December 29 to 31, 1914. The opening session on the afternoon of the 29th was held jointly with the American Philosophical Association and the Conference on Legal and Social Philosophy. The subject for discussion at this session was "Constitutional and Legal Guarantees." Papers were read by Prof. W. F. Dodd of the University of Illinois and G. H. Mead of the University of Chicago. Professor Dodd's paper, entitled "Political Safeguards and Constitutional Guarantees" dealt with the subject largely from the standpoint of the power exercised by the courts over legislation supposed to be in conflict with such guarantees; while the paper of Professor Mead presented the subject in the light of the theory of natural right and the growth of institutions. The discussion at the close of this meeting was participated in by Profs. J. P. Hall and Ernst Freund and by President Goodnow. The last named speaker pointed out that we are the most lawless people that claim to be civilized, and he urged that emphasis should be placed on social duties rather than on individual rights.

The session on Tuesday evening was devoted to the presidential address of Prof. John Bassett Moore, who took as his subject "The Law and the Organization," which is published in this number of the REVIEW. His paper, which was listened to with great interest, was followed by an informal reception at the Congress Hotel.

At the session on the general subject of State Government, which took place Wednesday morning, the principal paper was read by President E. J. James of the University of Illinois, on "The Reorganization of State Government." He maintained that no general or permanent answer can be given to the question as to what is the best form of state government, because organization depends on function, and the functions of the States are continually changing, and their forms of government must therefore be continually changed to suit new conditions. The increase of federal authority and of municipal functions, he said, are cutting into the autonomy of the States, which find themselves between the upper and nether millstones of the nation and the city. At this session short papers were read dealing with the New York constitutional convention by Mr. J. I. Wyer of the New York State Library, and with administrative reorganization in Illinois, Minnesota, and Iowa by Professors J. A. Fairlie, J. S. Young, and F. E. Horack, respectively. Prof. C. A. Dykstra of the University of Kansas spoke on the proposal for so-called government by commission in that State.

At the general session held Wednesday afternoon, papers of rather diverse kinds were presented. President Goodnow gave an address on "Reform in China," while Professor Ogg of Wisconsin spoke on "The Trend of Italian Politics." President Goodnow showed that the Chinese have developed no conception of political authority or of individual rights, and that they live by moral precepts rather than by law. His contention that the Chinese are not fitted for representative government was taken exception to by Professors Beard of Columbia and Sudhindra Bose of the University of Iowa. At this session a paper was also presented by L. D. Upson of the Dayton Bureau of Municipal Research on "The City Manager Plan in Ohio." Sentiment seemed to favor this plan of city government over the commission plan from both theoretical and practical standpoints. As was pointed out, however, by Prof. A. R. Hatton, of Western Reserve, a danger lurking in the city manager plan is that the manager is likely to become a political rather than a purely administrative officer.

A dinner conference on instruction in elementary courses in American government was held Wednesday at the City Club, at which about

seventy-five persons were present. Among those who spoke were Professors J. W. Garner, Jesse Macy, J. A. Woodburn, C. A. Beard, W. A. Schaper, K. F. Geiser, F. W. Dickey, and F. D. Bramhall.

The Wednesday evening session was devoted to the subject "The Administration of Justice: Its Machinery and Organization." Prof. A. M. Kales, of Northwestern University in his paper on "Methods of Selecting and Retiring Judges" urged the separation of the issues of the selection and the retirement of judges. He declared that the selection of judges by the electorate does not and cannot exist, because the people have no adequate knowledge of the qualifications of the candidates. He advocated the application of the short ballot idea, by allowing the people to elect the chief justice alone, and authorizing the chief justice to appoint the other judges. Prof. J. P. Hall of the University of Chicago outlined a proposed plan for a "Unified Court and its Branches." Other papers were read on "Court Organization for a Metropolitan District" by Mr. F. B. Johnstone, and "The Court of Conciliation" by Judge Manuel Levine. Following this meeting a smoker was held jointly with the Historical Association at the University Club.

The subject for the Thursday morning session was "The Independence and Equality of States," and papers were read on this topic by Prof. P. M. Brown of Princeton University and Prof. C. C. Hyde of Northwestern University. Professor Brown attacked the principle of the equality of States, but Prof. A. S. Hershey of Indiana University, who took Prof. Roland G. Usher's place, speaking on the subject "The Rights of Nationalities," maintained that the theory of equality still has validity. Professor Hershey traced the origin of the present European war to the failure of the Congress of Berlin to give adequate recognition to the rights of nationalities. Prof. A. C. Coolidge of Harvard, in his paper on "The Reconstruction of the Map of Europe," voiced the opinion that in reconstructing the map after the exhaustion of the struggling European nations, the principle of nationality would have to be considered, but that its application to specific cases bristled with difficulties. The discussion at the close of this session was participated in by Miss Jane Addams of Chicago and others. It seemed to be the opinion of all the speakers that in regard to the determination of the question of peace or war, governments should be to a greater extent under the control of the people.

At the business session Thursday afternoon, the Committee on Practical Training for Public Service submitted a report and the following officers of the Association were elected for the present year:

President, Prof. Ernst Freund, of Chicago; first vice-president, Prof. Jesse Macy, of Iowa; second vice-president, Prof. W. B. Munro, of Harvard; third vice-president, Prof. Bernard Moses, of California; and secretary-treasurer, Prof. Chester Lloyd Jones, of the University of Wisconsin.

Prof. L. S. Rowe, of the University of Pennsylvania, who has been absent for special studies in South America for half a year resumes his work during the second semester.

Dr. Frederic C. Howe has been appointed by President Wilson commissioner of immigration at the port of New York.

A committee of the National Municipal League on training for public service, consisting of Prof. J. A. Fairlie, Richard S. Childs and Clinton Rogers Woodruff, has been appointed to coöperate with similar committees of the American Political Science Association and the American Economic Association.

Mr. Arthur Crosby Ludington, a member of the American Political Science Association and of the executive committee of the New York Citizen's Union, and author of *American Ballot Laws, 1888-1910*, died in London last November as the result of an accident.

Rear-Admiral Alfred T. Mahan, U. S. N., retired, well known for his works on international politics from the standpoint of sea power, died in Washington on December 1.

Dr. C. L. King, of the University of Pennsylvania, has been promoted from instructor to assistant professor of political science. Dr. King has succeeded Dr. Emory R. Johnson as editor of the *Annals of the American Academy of Political and Social Science*.

Dr. Delos F. Wilcox of New York City, has been appointed deputy commissioner of that city's department of water supply, gas and electricity.

Prof. Dana C. Munro, of the University of Wisconsin, has accepted the professorship of mediaeval history in Princeton University, and will assume his new duties next fall.

Prof. W. A. Robinson, formerly of Yale and Idaho State University, has been appointed to take charge of the courses in government at Washington University, Saint Louis.

At Columbia University, Prof. H. L. McBain has been promoted to the rank of associate professor of municipal science and administration, and Dr. E. C. Stowell has been promoted to the rank of assistant professor of international law.

Mr. Theodore Marburg and Senator Elihu Root have been elected president and vice-president, respectively, of the American Society for Judicial Settlement of International Disputes.

Prof. Garrett Droppers of Williams College has been appointed United States minister to Greece, and Prof. W. W. McLaren, formerly of Keiogijuku University, Tokyo, is giving his courses for the present year.

Mr. Julius Klein has been appointed instructor in Latin-American history at Harvard University.

Hon. Nathan Matthews is the author of a book on *Municipal Charters*, which has been published by the Harvard University Press. Mr. Matthews was mayor of Boston from 1891 to 1895, and was also chairman of the commission which prepared the present charter of the city. For the last two or three years he has given lectures on Municipal Government at Harvard.

Dr. R. E. Curtis, who resigned last fall from the University of Georgia, has been appointed to a temporary vacancy in the Political Science Department of Oberlin College.

Dr. B. F. Moore, formerly of the University of Wisconsin, is engaged in research work this year for the United States Commission on Industrial Relations.

Mr. Dave W. Hardy of the University of Texas has been appointed assistant in political science in the University of Missouri.

Prof. Arnold Bennett Hall of the University of Wisconsin has just completed a revision and enlargement of Fishback's *Manual of Ele-*

mentary Law. Much has been rewritten and new chapters have been added. It will be published by Bobbs-Merrill in January.

The American Telephone and Telegraph Company has brought out a third edition of their *Comparative Summary of Laws Relating to the Regulation of Telephone and Telegraph Companies by Commission*. The work seems to be well done and will be found very convenient for those interested in the subject.

The Albert Shaw lectures in American Diplomatic History at Johns Hopkins University were given this year by Prof. C. W. Alvord, of the University of Illinois. His subject was "The Partition of the West in 1783." The James Schouler lectures at the same university will be given this year by Prof. W. A. Dunning of Columbia University. His subject will be "Early Phases of Nineteenth Century Political Theory."

The Clark Memorial lectures at Amherst College are being delivered this year by Prof. George W. Kirchwey of Columbia University Law School on the subject "The Relation of Law and Legislation to Social Control."

Prof. H. C. Adams, of the University of Michigan, who has recently been engaged in work for the Chinese government, resumes his duties at the University this winter.

The annual series of lectures on the Barbour-Page Foundation at the University of Virginia were delivered this year by former President W. H. Taft upon the subject "The Executive Power: Its Duties and Responsibilities." Professor Taft also delivered a series of lectures at the University of Chicago in November on the same subject.

The lectures on the McBride Foundation at Western Reserve University were given this year by Sir Harry Johnston on the general subject of "Problems of the British Empire."

The fourth meeting of the University Commission on Southern Race Questions was held at George Washington University in December. Prof. W. M. Hunley, of the University of Virginia, is secretary of the commission.

At a "Commonwealth Conference" held last December under the auspices of the University of Oregon for the consideration of state problems with a view to influencing the action of the present Oregon legislature, plans for the reorganization of the state administration, the amendment of the state budget law, the establishment of public employment agencies and legislation for hydro-electric municipal districts were discussed. Although the conference made no specific recommendations to the legislature, a committee was appointed to prepare a digest of the discussions for the use of that body.

At the annual meeting of the American Society of Mechanical Engineers held in New York City in December, one session was devoted to the subject of public service. At this session a paper on "Training for the Municipal Service in Germany" was read by Prof. C. L. King of the University of Pennsylvania, which has been published in a separate pamphlet of fourteen pages.

The annual Conference of State Governors was held at Madison and Milwaukee, Wisconsin, in November. About 20 governors were in attendance. Among the subjects discussed were rural credits, state control of natural resources, and the exemption of government land from state taxation. A committee was appointed on uniform state laws on safety and sanitation in places of employment. The *Proceedings of the Conference of Western Governors* held at Denver, Colorado, last April have been published (Denver, 1914, pp. 116). It contains papers upon aid to road construction, public lands, irrigation, and regional banks.

A committee of the New York Peace Society has been appointed to outline federal legislation for the safeguarding of the rights of aliens in the United States in connection with state legislation such as the Arizona and California anti-alien laws. The Arizona anti-alien employment act has been declared unconstitutional by the federal district court at San Francisco.

The International Commission of Jurists created by the Third International American Conference of 1906 to formulate codes of international law for the American nations will hold its second meeting at Rio de Janeiro during the coming summer. A special commission representing nine American states has been instituted by the Pan-American Union

for the purpose of considering the common interests of the American neutral nations in the light of the present European war.

The third annual meeting of the Chamber of Commerce of the United States will be held in Washington on February 3, 4, and 5, 1915. The American merchant marine and coöperation of American business men in their export trade will probably have the greatest amount of attention at this meeting. If the results of earlier annual meetings may be taken as criteria, discussion of these subjects will result in expressions of opinion upon which business men of very diverse interests may agree. The federal reserve act, the federal trade commission act, and the Clayton act, in important provisions, accord with recommendations of the chamber which followed discussions at annual meetings and referenda.

The second annual Conference on 'Taxation in Indiana' was held in Indianapolis in December under the auspices of the Extension Division of Indiana University and Indiana State Tax Association. Papers were read by Profs. W. A. Rawles and T. F. Moran, and Mr. J. A. Lapp.

The second National Conference on Popular Government was held at Washington in January under the auspices of the National Popular Government League. The subjects considered were the direct primary, the initiative, referendum and recall, the need for an effective federal corrupt practices act and the problem of publicity. Mr. Judson King of Washington is secretary of the League.

The Conference for Better County Government which met at Schenectady, New York, in November was the first state-wide county conference ever held. Papers were read on various phases of county government. Mr. R. S. Childs contributed a paper on "The County Manager Plan."

The fifteenth annual meeting of the National Civic Federation was held in New York City, December 4 and 5. Sessions were held on "Governmental vs. Private Enterprise," "Social Insurance" "Workmen's Compensation" and "National Defense." A special committee of the executive council of the Federation, composed of Seth Low and W. R. Willcox has made a report on "A Draft Bill for the Regulation of Public Utilities, with Documents Relating Thereto" which has been published by the Federation (October 23, 1914, pp. 124).

The thirty-fourth annual meeting of the National Civil Service Reform League was held in Chicago, December 3 and 4. Among others, papers were read on "A Constructive Programme for the National Civil Service," by William B. Hale, and on "Some Essential Features of a Model Civil Service Law" by George T. Keyes, secretary of the League. A number of the addresses are published in *Good Government* for January. The *Proceedings* of the Pueblo meeting of the National Assembly of Civil Service Commissions are in press and may be obtained for twenty-five cents from the secretary, John T. Doyle, care of the United States Civil Service Commission, Washington, D. C.

The Proceedings of the National Conference on Universities and Public Service held in New York City last May at the call of Mayor Jno. P. Mitchel have been published by the Committee on Practical Training for Public Service of the American Political Science Association (Madison, Wisconsin, 1914, pp. 289). This collection of papers will prove valuable in promoting the decided trend toward a greater participation by university men in public work. The Committee on Practical Training for Public Service has also published a pamphlet of fifteen pages containing a "Proposed Plan for Training Schools for Public Service."

At a meeting held in Boston on January attended by representatives of the principal universities and colleges in Massachusetts, an organization was formed to be known as the University Council of Massachusetts. The purpose of the Council is to extend the expert service of the faculties of these institutions to the State and municipalities. Pres. H. A. Garfield of Williams College and Prof. J. H. Ropes of Harvard were elected president and secretary, respectively, of the organization. An illustration of the proposed coöperation between the university and the State is the recent appointment by Governor Walsh of the members of the administrative board of the new Harvard-Technology Coöperative School for Health Officers as members of the newly created Massachusetts State Health Council.

Municipal universities are advantageously situated for public service, and, in this connection, it may be noted that the representatives of municipal universities who attended the recent meeting of the National Association of State Universities at Washington, met and formed an organization to be known as the Association of Urban Universities. The Association proposes to include in its membership all institutions coöperating with cities and training for public service.

At the annual meeting of the National Municipal League, held at Baltimore in November, Mr. Arthur W. Dunn, secretary of the committee of the League on civic education presented the report of that committee on its work during the past year. It appears from the report that the committee has effected an affiliation with the federal bureau of education, whereby a regular series of publications on the subject of civic education may be distributed.

The eighth annual meeting of the American Association for Labor Legislation was held at Philadelphia, December 28-29, the principal topic discussed being Workmen's Insurance. At the same time and place was held the second national conference of the American Association on Unemployment.

The *New Republic*, a new weekly magazine, was started in November. It is styled "a journal of opinion which seeks to meet the challenge of a new time," and undertakes to fill in this country the place occupied in England by the leading weeklies. The editor-in-chief is Mr. Herbert Croly, author of *The Promise of American Life* and *Progressive Democracy*, assisted by a body of younger writers on public questions.

The *Green Bag* has been absorbed by the *Central Law Journal*, and its former editor Mr. Arthur W. Spencer has been added to the staff of editors of the *Journal*.

The report of the committee on international law of the American Bar Association, presented at the annual meeting of that organization in Washington last October, recommended coöperation with various associations having in view measures of international benefit. The report contains a list of the treaties negotiated and of the main international incidents affecting this country during the year.

Bulletin VI of the American Judicature Society contains reprints of papers on "Organization of Courts" by Roscoe Pound; "Methods of Selecting and Retiring Judges," by A. M. Kales; and "Local Courts of Limited Jurisdiction," by Herbert Harley. Bulletin VII is devoted to a draft of a proposed "State-wide Judicature Act." The secretary of the Society is Herbert Harley, 29 S. La Salle Street, Chicago.

The report of the tour of the group of university men through the chief capitals of South America undertaken last summer under the auspices of the Carnegie Endowment for International Peace in the interest of closer relations between the two continents was published by that foundation in November. The report is written by Prof. H. E. Bard, of Columbia University.

The law enacted by the general assembly of Missouri in 1913 enabling absentee voters to cast their ballots at any place within the State received its first application at the general election in November. Despite the fact that many did not know of the existence of the law, a considerable number appear to have taken advantage of its provisions. A considerable proportion, however, of the ballots cast by absentee voters were rejected for various reasons.

The Missouri Code Commission, appointed by Governor Major to consider the revision and simplification of the civil and criminal procedure of the State of Missouri has submitted its report, which embodies 18 proposed bills to be submitted to the present general assembly. The commission considered that a number of changes in the constitution are necessary. As it did not believe, however, that it was practicable to secure the passage of a number of separate amendments, it recommends that provision should be made for a constitutional convention.¹

At a number of colleges and universities special courses of lectures are being delivered this winter on various phases of the European war. Among such institutions are New York, Columbia, Chicago, Princeton, Amherst, Hamilton and Rice Institute. The course at Princeton University was given under the auspices of the International Polity Club. Among the speakers were Prof. John Bassett Moore and M. I. Pupin of Columbia and Dr. Bernhard Dernburg of Germany. At Columbia University, Prof. G. de Lapradelle of the *École de Droit* of the University of Paris, French exchange professor for the year 1914-15, delivered a series of lectures on "*La Guerre et le Droit*."

The possibility of the expansion of American trade in South America as a result of the European war has stimulated interest in South Ameri-

¹ Furnished by Prof. Isidor Loeb, University of Missouri.

can government and institutions, and university courses are being organized upon this subject. Among these is the course in the government, history and economic life of South America recently inaugurated at the University of Virginia. This course is grouped with the courses in history, economics and political science, and is being conducted by Prof. W. M. Hunley and Dr. James Bardin.

The *Public Affairs Information Service*, formerly issued on mimeographed sheets, is now printed by the H. W. Wilson Company of White Plains, New York, cumulated bi-monthly and issued to member libraries. It enumerates and briefly summarizes a broad range of current items relating to public affairs of a more or less elusive and fugitive character, including public documents and reports, court decisions, and miscellaneous publications.

The village of Oberlin, Ohio, is contemplating the adoption of the manager form of government, and Prof. K. F. Geiser, of Oberlin College, is writing a series of articles for the local newspapers on this form of city government with a view to instructing the local citizens on the subject. Professor Geiser will shortly publish through Charles Scribner's Sons the Ohio edition of James and Sanford's *Government in State and Nation*.

The messages sent by state governors to the various legislatures at the beginning of the present sessions form an interesting body of communications. To mention but a single one, the Ohio legislature is addressed by the newly elected governor just inaugurated, in a tone markedly different from that used in the past two years. Evidently with vivid recollection of the campaign just past, Mr. Willis interprets its result as a declaration by the people of the State that they will not have executive domination of the legislature or centralisation of the administration. His inaugural suggestions to the general assembly are purposely vague, he will leave that body to its own guidance; but he lets it be plainly manifest, as consistency with his electoral campaign would indeed require, that he favors immediate and decisive withdrawal from the advanced position taken by the recent Cox administration in respect to state control of saloon licensing and state appointment (in place of local election) of tax assessors.²

² Contributed by Prof. H. R. Spencer, Ohio State University.

The committee appointed two years ago by the Missouri senate for the purpose of investigating labor conditions in that State has submitted a report embodying a workmen's compensation bill, and a bill for an industrial commission to take the place of the existing bureaus of labor and statistics, mines and mine inspection, factory inspection and a number of free employment bureaus.³

In his *Historisch-Politische Aufsätze und Reden* (Munich and Berlin, Oldenburg, two volumes, 1914, pp. vi, 344, ii, 382), Hermann Oncken has gathered together a number of essays upon German politics and international relations. Of special interest are those dealing with the Monroe Doctrine, American expansion and foreign policy.

A recent volume in the Home University Library is that by H. P. Gooch on *Political Thought in England: from Bacon to Locke* (Henry Holt & Co.).

A volume of *Essays, Political and Historical*, by Charlemagne Tower, formerly minister to Austria-Hungary and ambassador to Russia and to Germany, has been published by J. B. Lippincott (Philadelphia, 1914). They deal with such subjects as: "Some Developments of Modern International Law," "The Treaty Obligation of the United States Relating to the Panama Canal," and "The European Attitude toward the Monroe Doctrine."

Prof. H. G. James' *Principles of Prussian Administration* (New York, The Macmillan Co., 1913, pp. 309) has peculiar interest at the present time. For it states the reasons for the great governmental efficiency of the German people which enables them to carry on almost single handed the tremendous struggle in which they are now engaged with almost the whole of the rest of Europe. Dr. James treats his subject from several viewpoints. He prefaces his description of existing conditions with a survey of the development of the Prussian administrative system. He also gives a clear and succinct account of the system as it now exists, treating of both its organization and the functions which it discharges. His book may be recommended to all those who are interested in administrative problems.

An abridged and revised edition of President A. Lawrence Lowell's well-known *Governments and Parties of Continental Europe* has been

³ Furnished by Prof. Isidor Loeb, University of Missouri.

brought out in a single volume (Cambridge, Harvard University Press, 1914). It is intended especially for use as a text-book.

A new and revised edition of Prof. Dean C. Worcester's *The Philippines, Past and Present* has been issued by the publishers, The Macmillan Company. The author has added a new chapter entitled "One Year of the New Era."

A two-volume work entitled *The Spanish Dependencies in South America, an Introduction to the History of their Civilization*, by Prof. Bernard Moses has been published by Smith, Elder & Co., London.

The Report of the Commission on National Aid to Vocational Education, created by the Sixty-third Congress, has made its appearance in two volumes. (House document 1004, 63d Cong. 2d sess., 1914, pp. 207, 292). The first volume contains the views and recommendations of the commission and the second a record of the hearings. The commission recommends the distribution of national funds among the States for the training of teachers of vocational subjects and, for the administration of these funds, recommends the creation of a federal board on vocational education. A bill providing for carrying out the recommendations of the commission is published in the report.

Harrington and his Oceana: A Study of a Seventeenth-Century Utopia and its Influence in America, by H. F. Russell Smith of St. John's College, Cambridge (Cambridge, The University Press, 1914, pp. ix, 223) is a study of the history and influence of a certain set of political ideas, in which the author attempts to show and estimate the influence which Harrington's forward-looking ideas as to certain governmental devices had in France and in America.

An elaborate discussion of certain phases of educational administration is contained in *The Organization and Administration of a State's Institutions of Higher Education*, by Arthur Lefevre (Austin, Texas, 1914, pp. 524), published for the Organization for the Enlargement by the State of Texas of its Institutions of Higher Education. It is divided into two parts, the first of which deals with the features of organization for which the legislature of the State is responsible and the second with internal organization and administration.

Diplomatic Protection of Citizens Abroad by Dr. Edwin M. Borchard, Law Librarian of Congress, and lately Assistant Solicitor of the Department of State, is the title of an extensive work announced for early publication by the Banks Law Publishing Co.

The New York Constitutional Convention Commission, created by an act of the 1914 legislature for the purpose of collecting information for the use of the delegates to the convention, which meets in April, is taking steps toward the preparation and issuance of the following publications: (1) The full text of every constitutional provision that has been in force in the State at any time; (2) the complete text of the existing constitution, with elaborate annotations; (3) a subject-index digest of all the state constitutions; and (4) statistics and descriptive statements covering the work, organization and expenses of the various state departments. The commission also proposes to secure for the use of the delegates a supply of the *Proceedings of the New York Academy of Political Science* on the "Revision of the State Constitution." The commission is working in cooperation with the State Library, which furnishes its secretary and is to perform one or two of the projected services.

Of especial timeliness is the valuable collection of papers on "The Revision of the State Constitution" contained in the *Proceedings of the New York Academy of Political Science* for October. It includes many notable papers upon various topics which will come before the Constitutional Convention by such men as Elihu Root, Frederic C. Howe, Henry L. Stimson, F. A. Cleveland, Ernst Freund, W. F. Dodd, and others. The present volume constitutes Part I, dealing with the general principles and mechanics of revision and the structure of state government. The Academy proposes to issue, in a subsequent volume of the *Proceedings*, Part II, dealing with local government and the regulation of economic and social conditions.

The question as to the advisability of holding state constitutional conventions is coming up in the legislatures now in session in the contiguous States of Missouri, Illinois and Kansas. In Illinois a Constitutional Convention League has been formed to push the project. In Missouri, the League of Missouri Municipalities at its annual meeting held last December endorsed the movement for a constitutional convention.

Volume XXV in the valuable collection *Das Öffentliche Recht der Gegenwart* is entitled *Das Staatsrecht des Vereinigten Königreichs Gross-Britannien-Irland*, by Julius Hatschek, of the University of Göttingen (Tübingen, J. C. B. Mohr, 1914, pp. 332).

The Report of the Librarian of Congress for the year ending June 30, 1914 has been issued (Washington, Government Printing Office, 1914, pp. 216). An appendix contains the texts of bills introduced and reports made in Congress upon the subject of a legislative reference bureau in the Library of Congress.

Compiled Statutes of the United States, Embracing the Statutes of the United States of a General and Permanent Nature, in Force December 31, 1913, compiled by John A. Mallory, with explanatory notes, has been brought out in five volumes by the West Publishing Co. of St. Paul.

In addition to the bibliography on the "European Crisis of 1914," the Library of Congress has recently published lists of references on "Federal Control of Commerce and Corporations: Special Aspects and Applications" (1914, pp. 104), and on "Water Rights and the Control of Water" (1914, pp. 104). The Library also has in press a list of references on "Convict Labor," and has in preparation new editions of the lists on "Child Labor" and "Industrial Arbitration."

Houghton, Mifflin Co. has just issued *Intervention and Colonization in Africa* by N. Dwight Harris, Professor of European Diplomatic History at Northwestern University. It is the first in a series on "World Diplomacy," the second volume of which, on *Intervention and Competition in Asia*, it is hoped will be ready for publication in two or three years.

A recent volume in the state government series being published by Scribner is that on *The Government of Kansas*, by Prof. C. A. Dykstra of the University of Kansas.

Modern Germany, by J. Ellis Barker, originally published in 1907, has been brought out in a fourth revised edition (New York, E. P. Dutton & Co., 1914). Considerable new matter has been introduced, bringing the work down to date.

Anything upon the subject of the tariff from the pen of Prof. F. W. Taussig of Harvard is of value and we therefore welcome the publication of his new volume, *Some Aspects of the Tariff Question* (Cambridge, Harvard University Press, 1914) constituting volume XIII of the Harvard Economic Studies. The book is characterized by the publishers as "his first comprehensive treatment of the subject in the light of modern conditions." It first takes up general principles relating to the tariff and then considers specific applications of these principles with respect to the duties on sugar, iron and steel and textiles.

The History of Third Party Movements in Iowa, by Prof. F. E. Haynes is in preparation for publication by the State Historical Society of Iowa. The second volume of the Iowa Applied History Series prepared under the auspices of the Society is now in press, the separate papers having already been issued as reprints. Prof. B. F. Shambaugh, the editor of the series, contributes the introductory paper on *Scientific Law-making*. The other titles in the series are: *Reorganization of State Government in Iowa*, by F. E. Horack; *Home Rule in Iowa*, by O. K. Patton; *Direct Legislation in Iowa*, by J. Van der Zee; *Equal Suffrage in Iowa*, by F. E. Horack; *Selection of Public Officials in Iowa*, by H. J. Peterson; *Removal of Public Officials in Iowa*, by O. K. Patton; *The Merit System in Iowa*, by J. Van der Zee; *Social Legislation in Iowa*, by J. E. Briggs; *Child Labor Legislation in Iowa*, by F. E. Haynes; and *Poor Relief Legislation in Iowa*, by J. L. Gillin. The paper on *Home Rule in Iowa* is noticed elsewhere in this number of the REVIEW

An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States, by Horace Secrist of the Department of Economics, Northwestern University (University of Wisconsin Bulletin No. 637, April, 1914, pp. 131) combines in unusual degree historical, economic, political and legal phases. It is divided into two parts, the first of which deals with constitutional restrictions upon state indebtedness and the second, with constitutional restrictions upon municipal indebtedness. The author criticises constitutional provisions applying uniformly to all municipalities, and urges that the borrowing powers of municipalities should be allowed to vary according to their character and function.

Studies in Ancient Hindoo Polity, by Narendra Nath Law, with an introductory essay by Prof. Radhakumud Mookerji (New York and

London, Longmans, Green, 1914, vol. I, pp. xlv, 203) is based upon new source material found in the text of the famous Arthasastra of Kantilya, which was recently discovered, but the age of which is not definitely known. It sheds much new light upon matters connected with ancient Hindoo government, such as law, legal procedure and courts of justice, as well as upon general conditions of life at that time. The second volume of the *Studies*, it is expected will be devoted to the machinery of administration.

In a volume entitled *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays* (Princeton University Press, 1914, pp. vii, 177), Prof. Edward S. Corwin has brought together five essays, the titles of which are as follows: "Marbury v. Madison and the Doctrine of Judicial Review;" "We, The People;" "The Pelatiah Webster Myth;" "The Dred Scott Decision;" and "Some Possibilities in the Way of Treaty-Making." Most important are the papers on the "Dred Scott Decision," which appeared in substance in the *American Historical Review* for October, 1911; and the essay on "Marbury v. Madison," part of which appeared in the *Michigan Law Review* for May, 1914. The essay on "Marbury v. Madison" discusses in an interesting manner the arguments urged to support the judicial power, and concludes that "the power rests upon certain general principles thought by its framers to have been embodied in the constitution."⁴

Studies in Southern History and Politics (New York, Columbia University Press, 1914, pp. viii, 394) is the title of a collection of papers inscribed to Prof. William A. Dunning of Columbia University, and written by his former students as a tribute to him upon the occasion of his election to the presidency of the American Historical Association. The work is edited by Prof. James W. Garner of the University of Illinois, who contributes the preface and one of the papers. The various contributions cover a very wide range of interest and deal with many phases of Southern history and politics, both before and after the Civil War. Among the papers which may be specially mentioned as being of particular interest to political scientists are: "The Judicial Interpretation of the Confederate Constitution," by S. D. Brummer; "The Federal Enforcement Acts," by W. W. Davis, "Negro Suffrage in the South," by W. Roy Smith; "The Political Philosophy of John C. Calhoun," by Charles E. Merriam; "Southern Political Theories," by D. Y.

⁴ Prepared by W. F. Dodd.

Thomas; and "Southern Politics since the Civil War," by James W. Garner. The theme of the last named paper is that "the time has come when the South ought to free itself from the thralldom of a single issue [the negro question] and think more of questions that more vitally affect its economic welfare." An adequate index is provided.

The recent passage by Congress of important trust legislation renders especially timely *The Trust Problem*, by Prof. E. Dana Durand (Cambridge, Harvard University Press, 1914) containing an amplification of lectures delivered by the author at Harvard on such subjects as "The Necessity of Prohibition or Regulation," "The Possibility of Preventing Combination," and "The Alleged Economies and Advantages of Combination." In the light of recent developments, President Van Hise has revised his book, originally issued in 1912, *Concentration and Control: A Solution of the Trust Problem in the United States* (New York, Macmillan, new edition, 1914). The hearings before the House Committee on the Judiciary on *Trust Legislation* have been issued in two volumes (Washington, 1914, pp. 2055). *Trusts and Competition*, by John F. Crowell, is the title of a new volume in the National Social Science Series, published by A. C. McClurg & Co. and edited by President McVey of the University of North Dakota.

The Law Division of the Library of Congress is about to publish the third volume in the series of guides to foreign law, the enterprise begun some two years ago to make more readily available to the investigator of comparative law the material in the collections on foreign law which the Library of Congress has systematically brought together. The volume about to be published is the *Guide to the Law and Legal Literature of Spain*, prepared under the direction of Dr. Edwin M. Borchard, Law Librarian, by Thomas W. Palmer, Jr., Sheldon fellow from Harvard. The earlier volumes in the series are the *Bibliography of International Law and Continental Law* and the *Guide to the Law and Legal Literature of Germany*. The volume on Spain is intended to lay the foundation for a *Guide to the Law and Legal Literature of Latin America* which is now in course of preparation.

Reports have recently been issued by State Efficiency and Economy Commissions in Massachusetts, Minnesota, Pennsylvania and Illinois. That of the Massachusetts Commission is upon *Functions, Organization and Administration of the Departments in the Executive Branch of the*

State Government (Boston, 1914, pp. 513). This report contains a mass of information not found in any other one place regarding each state department, board, commission and institution. A description also is given of types of departmental organization and methods of administration, together with some account of central control and supervision of state departments. The report is entirely expository and descriptive in character. Upon the basis of the information contained in the present report, the commission proposes later to issue further reports containing criticisms of existing conditions and constructive proposals for changes. The report of the Minnesota Efficiency and Economy Commission is the second and final report of that commission (St. Paul, 1914, pp. vii, 89). The recommendations of the commission embrace proposals for changes with regard to the organization of the civil administration, the merit system in the civil service, and the budget system in appropriations. All of these changes the commission proposes to bring about through the enactment of a "Civil Administration Code." The final report contains the text of this proposed code, with annotations and explanatory notes.

Recent publications dealing with taxation may be noted as follows: The Bureau of Corporations has published *Taxation of Corporations, pt. V, Mountain and Pacific States* (Washington, 1914, pp. 236). The portion dealing with California is especially interesting as that is the only State in the group which separates the sources of state and local revenue. This report completes the Bureau's survey of all except the Southern States. Two special tax commissions in the States have recently made reports, as follows: In Nebraska, *Report of the Special Commission on Revenue and Taxation*, appointed by Governor Morehead, pursuant to an act of 1913 (1914, pp. 243), and in Virginia, *Report of the Special Joint Committee on Tax Revision* to Governor Stuart in accordance with an act of March, 1914 (1914, pp. 298). Prof. G. O. Virtue of the University of Nebraska was a member of the Nebraska commission, and Prof. T. W. Page of the University of Virginia a member of the Virginia commission. Both reports consider the topic of separation of the sources of state and local revenue, and the Virginia commission recommends the creation of a state tax commission. Volume VIII of the *Proceedings of the National Tax Association*, containing the addresses delivered at the annual conference in Denver last September, was published in January. This volume contains the usual valuable features regarding state and local taxes and expenditures, and, in ad-

dition, for the first time deals with federal taxation, several papers being devoted to the federal income tax. This new departure is a virtual recognition of the fact that the problem of state and local taxation cannot be adequately considered entirely apart from those of the nation. Various legal points involved in the administration of the federal income tax are reviewed in the report of the Committee on Taxation of the American Bar Association, presented at the meeting of that Association at its meeting last October in Washington, and which has been published in a pamphlet of twenty-five pages. Prof. Ernst Freund, of the University of Chicago, is chairman of the committee. *The Taxation of Land Values in Western Canada*, by Archibald Stalker (Montreal, 1914, pp. 56) is the title of a recent thesis for the master's degree in McGill University. Two bulletins recently issued by the Tax Reform Association (29 Broadway, New York City) contain respectively a review of state tax legislation during 1914 and a summary of proposed tax amendments to state constitutions. Information regarding further material recently issued on the subject of taxation may be obtained from a pamphlet bibliography on the subject issued by the National Tax Association (Headquarters, 15 Dey Street, New York City).

Houghton, Mifflin and Company are soon to publish *The Law and Usage of War*, by Sir Thomas Barclay. This is a practical handbook of the law and practice of war and prizes for the use of both students and laymen. Sir Thomas Barclay is one of the best-known British authorities on international law in its relation to war. His book is arranged in the form of a handbook dealing in alphabetical order with all the important topics which the present war suggests. The book thus begins with Admiralty Procedure and Air Craft, and ends with Waters Territorial and Wireless Telegraphy.

The paragraphs on neutrality which constitute a considerable portion of the book will be specially useful to Americans, both lawyers and laymen. In an Appendix are printed the Declaration of Paris and the full text of all important Hague conventions dealing with such subjects as the commencement of hostilities, the rights and duties of neutral powers, the treatment of merchant ships, the conversion of merchant ships to war ships, the amelioration of the condition of wounded and sick in armies in the field, expanding bullets, etc.

Home Rule in Iowa, by O. K. Patton. Published as number 3 of volume II of the Iowa Applied History Series, edited by Benjamin F.

Shambaugh. This volume represents the most serious study of the home rule movement that has been attempted since F. J. Goodnow's book on municipal home rule. It has been called forth by reason of the fact that Dr. Goodnow's work was issued nearly twenty years ago and also because the home rule movement has become increasingly prominent in the twentieth century renaissance of municipal government. The author undertakes to state the problem of home rule, to review the history of the movement and the extent of the present application of the principle, to survey the situation in Iowa with a view to ascertaining home rule possibilities there and finally to offer suggestions which he deems advisable in connection with the reorganization of local government in that State.

Mr. Patton states his problem clearly, "What is the sphere in which local political corporations in Iowa should be allowed to move largely uncontrolled by the state government, and what is the sphere in which the activities of these local areas should be completely under the control of the State?" His examination of the history and development of home rule and his analysis of the home rule charter systems is admirable and timely. In his attempt to answer the problem, however, Mr. Patton offers no clear cut line of demarcation, except along lines already well worked out in experience. His attitude is revealed in the statement that "in time definite and more or less well-marked fields will be established for the activities of the State and local political corporations." This confidence in the ability of time to delimit the respective spheres of action is based on the adjustment of functions which has been gradually achieved in the relations between the States and the federal government. In his enumeration of functions that are distinctly of state-wide concern and those which properly fall within the sphere of local determination the author is generous to the municipalities, but makes evident his belief that in the debatable borderland no boundary can be fixed, inasmuch as it must always be fluctuating. In conclusion ten suggestions are offered for the application of the home rule principle in Iowa. Conspicuous among these is one that extends this power of self-government to counties as well as cities, a step which, as the author points out in an earlier chapter, might well involve the doing away with township government.

The monograph is one that will prove of service to students of municipal progress. Its conclusions give evidence of intelligent discrimination and a keen appreciation of the practical features of home rule as demonstrated in actual tests. Moreover, there has been a most

commendable amount of effort expended to ascertain what are the facts regarding the operation of home rule in States where it now obtains.⁵

The Judicial Veto, by Horace A. Davis (Boston, Houghton, Mifflin, 1914, pp. vi, 148) adds another to the now numerous books dealing with the subject of judicial control over legislation. The larger part of the volume is devoted to a reprint, with some revision, of Mr. Davis's article in this REVIEW (vol. VII, p. 541) on "Annulment of Legislation by the Supreme Court." Mr. Davis here seeks to prove that those who framed and adopted the Constitution of the United States did not intend to give to the Supreme Court power to determine the constitutionality of acts of Congress. Mr. Davis is not familiar with the excellent article of Mr. Frank E. Melvin on "The Judicial Bulwark of the Constitution" (this REVIEW, vol. VIII, p. 167). The important point in Mr. Davis's argument is the claim that the judiciary act of 1789 denied the power of the Supreme Court to annul congressional legislation; on the basis of this claim the author classes the supporters of the judiciary act as opposed to judicial review. This assumption ignores the fact that jurisdiction may be something different from the law to be applied in the exercise of jurisdiction; the first may require an express grant of power by the legislature, but the latter need not. In addition, those seeking to class individuals as favoring or opposed to judicial review because of support or opposition of the judiciary act, fail to remember that this act covered many matters and may have been supported or opposed for many reasons. Because of the present importance of the subject of judicial review, we have been apt to regard this subject as of equal importance to the framers of the national Constitution.

The volume here under review is of most value for its first two chapters. In these chapters the author points out clearly and effectively the consequences of judicial review as now exercised and urges that a procedure be devised which will expressly recognize the State as a responsible party to every case in which the constitutionality of a statute is tested. The proposed plan for accomplishing this purpose is worthy of careful consideration.

Arms and Industry. A Study of the Foundations of International Polity. By Norman Angell. (New York, G. P. Putnam's Sons,

⁵ Contributed by Russell M. Story, University of Illinois.

1914, pp. xlv, 248.) When Mr. Angell's well known book *The Great Illusion* appeared a few years ago it was popularly understood in many quarters that the author laid the whole basis of international rivalry upon the mistaken idea that the prosperity of nations depended upon their political power, and that he held that once this erroneous conception (as he proceeded to prove to it be) was removed, international peace would be the automatic result. To these persons the present war in Europe seems, in consequence, to be a complete refutation of Mr. Angell's views, in that the international solidarity born of the modern commercial and financial system has been proved to have no internal cohesion. But no one was more ready than Mr. Angell to admit the presence of other motives than material ones in promoting the situation of mutual rivalry and distrust in Europe; indeed, the "psychological case for war" is treated of at greater length than the "economic case for war." Hence it is wide of the mark to say that the present war is a sufficient answer to Mr. Angell's arguments;—it is rather proof, if anything, that *The Great Illusion* was a very real illusion after all.

In the present volume the author returns to the ideas which formed the subject of *The Great Illusion*. The chapters of the book are lectures delivered on separate occasions before widely differing audiences, but the author has bound them together so as to illustrate the development of general principles and to form a connected whole. The scheme of the argument is as follows: the principle of the division of labor, which lies at the basis of economic production, creates an interdependence between nations which makes the effectiveness of physical coercion a steadily decreasing factor. This interdependence is particularly manifested in the system of international credit which is a sort of nervous organism by which an injury to one part of the social body is immediately communicated to the other parts. Passing from the economic to the moral issues, the author shows that the basis of civilization is a convention not to use force to obtain our rights but to rely upon moral influences. This does not imply, however, a renunciation of the right of self-defense, which may be looked upon as a neutralization, rather than a use, of force. But self-defense must properly be treated as a problem of two parties, not of one, else it will end in a competition which is both futile and provocative of tension in international relations.

The author belongs to the newer generation of pacifists in contrast with the older school whose chief appeal was to the moral case against war. In taking his stand upon the ground of the material futility of

war he does not, however, minimize the value of the moral arguments which are brought against the non-material factors which make for war.⁶

France Herself Again, by Ernest Dimnet (New York and London, G. P. Putnam's Sons, 1914, pp. xii, 399) is an attempt to trace "the transformation of the public spirit which has been visible in France since the beginning of the twentieth century." But in order to do this, the author goes back and shows the deterioration of France under the Second Empire due to false ideals and low morals. The Tangier incident in 1905, however, was a "flash of lightning," and marks the awakening of the new France. While one may not agree with all the arguments and conclusions of the author, the value of the book as a whole is undoubted. The preface and conclusion were written since the outbreak of the European war. The book was written by the author himself in English.

In a small volume entitled *The Anti-Trust Act and the Supreme Court* (New York: Harper and Brothers, 1914. Pp. 132) ex-President Taft presents a brief but luminous account of the manner in which the act of 1890 has been judicially interpreted. The first two chapters state the limitations at common law upon rights of contract as to property, business and labor, and the general functions of the constitution and the courts in defining and protecting private rights. The manner in which the sugar trust case was prepared for trial by the government is severely criticized in the third chapter. Later decisions are then discussed in which it is shown how the doctrine of the Knight case has been gradually whittled away until there is practically none of it left. It is also argued that the doctrine as to "the rule of reason" declared in the Standard Oil and American Tobacco cases was not in essential conflict with the earlier cases. In his last chapter ex-President Taft expresses concern regarding various proposals pending in Congress for the amendment of the act, the tendency of which is, in his opinion, to leave first to an executive board and then to the court to decide and forbid what, in their judgment, is unfair competition. "If," he says, "this means more than what is included in unreasonable restraints of trade at common law now denounced by the anti-trust law, it would seem to be conferring legislative power." Mr. Taft believes that the doctrines in the Standard Oil and American Tobacco cases have been effective in securing the results at which they aimed.

⁶ Contributed by Prof. C. G. Fenwick, Bryn Mawr College.

The Balkan Wars, 1912-1913 (Princeton University Press, 1914, pp. 140) is the title of the publication in book form of the Stafford Little lectures delivered at Princeton in 1914 by Jacob Gould Schurman. Apart from the usefulness of the book as presenting in brief yet clear form the history of the fortunes of the Balkan States, it is of value as throwing light upon two important factors in the complicated relations of Slav to Greek and Turk. The first of these is the fact that in spite of the political overlordship of Turkey over the Balkans from the fourteenth to the nineteenth century, rigorous as it was, the influence of the Greek Church continued to survive in religious, intellectual and commercial affairs. In consequence the Greek patriarch was enabled to carry on a propaganda of Hellenism and to exercise a domination which explains the deep and abiding hostility of the Bulgarian to the Greek. The second factor was the complex population of Macedonia. Being an extension of the Servian, Bulgarian and Greek races, it became first the victim of Turkish revenge for the acts of the various insurgent bands sent to assert the claims of their respective nationalities, and subsequently the victim of the internecine war waged by Servia and Greece against Bulgaria. Mr. Schurman was in Athens during the course of both wars and his statement of the responsibility for the second war is an exceedingly fair one. Bulgaria, in opposing a conference of the four allies left no alternative but war, which, indeed, she herself was the first to begin. The author does not, however, attempt to place the responsibility for the lack of harmony between the civil government of Bulgaria and the military authorities.⁷

In view of the present status of international politics, the following recent foreign publications are of interest: *Die Grossmächte der Gegenwart*, by J. R. Kjellen (Leipzig, Teubner, 1914, pp. 208); *Des Cessions de Territoires envisagées dans leur Principe et dans leurs Effects relatifs au Changement de Souveraineté et de Nationalité*, by M. Costes (Paris, Rivière, 1914, pp. 236); and *Die Neutralisation von Staaten insbesondere die der Schweiz, Belgiens, Luxemburgs, und des früheren Kongostaates*, by S. Richter (Berlin, Rothschild, 1913, pp. 252).

The flood of publications dealing with various phases of the European war, for the most part ephemeral in character, continues unabated. A few of these may be mentioned as follows: *The War in Europe*, Prof. A. B. Hart (New York, Appleton, 1914, pp. 254); *Why We are at War* (Clarendon

⁷ Contributed by C. G. Fenwick.

Press, 1914, pp. 251), by six members of Oxford University faculty; *The Origins of the War*, by J. Holland Rose (Cambridge University Press, 1914); *The War and America*, by Hugo Münsterberg (Appleton, 1914); *Great Britain and the Next War*, by A. Conan Doyle (Boston, Small, Maynard, 1914), a reply to Bernhardt's *Germany and the Next War*; *Britain's Case Against Germany*, by Ramsey Muir, of the University of Manchester (Longmans, Green & Co., 1914); *What Germany Wants*, by Edmund von Mach (Little, Brown & Co., 1914); *The Great War*, by F. H. Simonds (New York, Kennerley, 1914); *The Real "Truth About Germany,"* by Douglas Sladen, with an appendix on "*Great Britain and the War*," by A. Maurice Low (New York, G. P. Putnam's Sons, 1914); *Who is Responsible? Armageddon and After*, by Cloudeley Brereton (Putnam, 1914); *The Clash of Nations, its Causes and its Consequences*, edited by Rossiter Johnson (New York, Nelson, 1914); *The Diplomatic History of the War*, edited by M. P. Price (New York, Charles Scribner's Sons, 1914); *The World War*, by Elbert Francis Baldwin (The Macmillan Co., 1914); *The Evidence in the Case*, by James M. Beck (New York, G. P. Putnam's Sons, 1914); *The Nations of Europe*, by Charles Morris (Philadelphia, John C. Winston Co., 1914); *Deutschland Über Alles, or Germany Speaks*, by J. J. Chapman (Putnam, 1914); *Handbook of the European War*, by S. S. Sheip (White Plains, H. W. Wilson Co., 1914); *Treitschke and the Great War*, by Joseph McCabe (New York, F. A. Stokes Co., 1914); *Treitschke's Lectures on Politics*, translated by A. L. Gowmans (New York, F. A. Stokes Co., 1914); *Germany's Madness* by Dr. Emil Reich, late of the University of Vienna (Dodd, Mead); *The Political Thought of Treitschke*, by H. W. C. Davis (Scribner's); and *Treitschke*, by Adolph Hausrath (Putnams).

Further material regarding the war may be found in a bibliography by Prof. Clarence Perkins in the November *History Teachers Magazine*, and in one on the *European Crisis of 1914*, a list of references on Europe and international politics in relation to present issues, compiled by H. H. B. Meyer (Washington, Library of Congress, 1914, pp. 144).

Official documents relating to the war may be found in a number of the above volumes; and they have also been issued separately by the various governments, the more important being the "White Papers" of England and Germany, the Russian "Orange Paper," the French "Yellow Book," and the Belgian "Gray Paper." The issues of *International Conciliation* for October, November and December (nos. 83, 84, and 85) contain official documents regarding the war. A collection of documents relating to France in preparation for war may be found in

Guerre de 1914; Documents officiels, Textes, Législatifs et Réglementaires (Paris, Dalloz, 1914).

New editions of recent books revised in the light of the European situation include *Problems of Power*, by W. M. Fullerton (Scribner), first published in 1913, in which the author brings his survey of international politics up to the outbreak of the war; and *The Balkan Wars, 1912-1913*, by Jacob G. Schurman (Princeton University Press), in which President Schurman in a new preface outlines the intimate relations of the Balkan situation to the present war.

A number of the foregoing books on the war are more particularly described in the note by Professor Turner which follows. Attention is also called to the contribution by Professor Spencer in which some of the German ante-bellum literature is considered.

WAR LITERATURE

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As was to be expected, the war of the nations has already produced an extensive literature, which is increasing rapidly, and bids fair in a little while to become enormous. Much of it is controversial and ephemeral, and some of it is of little merit even for the moment, but there has already been published a number of books which are interesting, informing, and well-written. In such a notice it is not necessary to do more than allude to the various "Papers" which the European governments have issued, which are as yet the principal sources for diplomatic information, or the works of Bernhardi, published some years ago and frequently reviewed, but which opponents of Germany cite to explain a great deal of what has arisen in the present crisis.

A book regarded in England as an answer to Bernhardi is *Germany and England*. By J. A. Cramb, M.A., Late Professor of Modern History, Queen's College, London. Introduction by the Hon. Joseph H. Choate. Dutton, New York, 1914. Pp. xiv, 152. This little book contains the ablest explanation of the rivalry between Germany and England, which is the mighty growth of a modern Germany, righteous and justified from her own point of view, but essentially antagonistic to England who lies across her path. Face to face with Germany's virile militancy, there must be no pacifism or yielding policy, and the author calls upon his countrymen to arm and prepare for inevitable conflict. Notwithstanding that the volume appears to have been put

together from the lecture notes of the author—who died before the outbreak of the war—the writing is of rare beauty. Throughout the thought is of wonderful depth and power.

A book inferior in power and originality, but which rose to extraordinary popularity with the beginning of the war, is one whose merits and defects had been noticed before the war began: *Pan-Germanism*. By Roland G. Usher, Associate Professor of History, Washington University, St. Louis. Houghton, Mifflin, Boston and New York, 1913. 14th edition, 1914. Pp. viii, 314. In this book is contained one of the best accounts of German aspirations and designs, all of which the author calls Pan-Germanism, together with the opposition of the rival European powers. The account is clear and graphic. The principal defect is lack of cautious statement, and categorical assertion of what is sometimes not even plausible, but more often of what the author may conjecture but cannot possibly know. This defect, however, in the opinion of the reviewer, is not to be weighed against the positive merit of the book.

Less brilliant than Cramb's work, though well-written, is *The New Map of Europe (1911-1914). The Story of the Recent European Diplomatic Crises and Wars and of Europe's Present Catastrophe*. By Herbert Adams Gibbons, Ph.D. Century Company, New York, 1914. Pp. xii, 412. The book is especially admirable because of the intimate acquaintance which the author shows with that part of European politics which centers in Austria, Turkey, and the Balkans, where he has spent much time and made many associations. Nowhere have I seen a better discussion of the questions of southeastern Europe. There are also admirable chapters on the world policy of Germany, the administration of Alsace-Lorraine, the Bagdad railway, Poland, Crete, Albania, and the incidents which led immediately to the war. There are some slight inaccuracies, which may be due to haste, but they are without importance, and do not detract from the excellence of a book which will probably give more information about the causes of the war than any other available.

A book written avowedly for the purpose of assisting people to understand the causes of the war, the character and resources of the belligerents, the methods employed, and the issues at stake, is *The War in Europe, Its Causes and Results*. By Albert Bushnell Hart. Appleton, New York and London, 1914. Pp. x, 254. It is a useful and well-arranged compilation of facts, stated clearly, but without spirit or the reality which comes from intimate acquaintance with the things described.

It contains some errors and some confused statements (for example, p. 41), but it will probably be serviceable to many readers.

Many writings of controversial character have appeared. *Who is Responsible? Armageddon and After*. By Cloudesley Brereton. G. P. Putnam's Sons, New York and London, 1914. Pp. ix, 104, is an interesting statement from the English point of view, designed to show that the development of Germany from the time of Frederick the Great has tended steadily toward a character and a position which have made inevitable the present world catastrophe. There is admirable description of the excellence which characterizes so many aspects of German life, and of the defects and brutality of its spirit, and also of German weaknesses. Much of the defect, in the mind of the author, arises from the fact that there is in Germany a too exclusively man-made civilization. Mighty issues are at stake: "This is probably one of the great turning-points in the world's history—and the issue may be a great spiritual Renaissance or the return of the Huns" (p. vii).

More fiercely controversial is *The Real "Truth about Germany," Facts about the War*. By Douglas Sladen. *An Analysis and a Refutation from the English Point of View, of the Pamphlet "The Truth About Germany," Issued under the Authority of a Committee of Representative German Citizens. With an Appendix, Great Britain and the War*. By A. Maurice Low, M.A. Putnam's, New York and London, 1914. Pp. x, 272, of which the scope is sufficiently indicated by the title. If the pamphlet against which it is directed was so poorly argued and so loosely constructed as to excite contempt, it must be said that this attempted refutation is in many places neither calm, dignified, nor conclusive, though in the opinion of the reviewer the reply is better, if not more effective, than the argument against which it was directed—not a very difficult task to accomplish.

Representing strongly the German point of view is *The War and America*. By Hugo Münsterberg. Appleton, New York and London, 1914. Pp. viii, 210. The book is an able statement of the conduct of Germany and her ally, and an attempt to influence American opinion in their favor. The thesis is the danger to the civilization of the world which would follow the triumph of Russia, which according to the author is the inevitable outcome of the triumph of the allies. "If Russia wins to-day and Germany is broken down, Asia must win sooner or later, and if Asia wins, the achievements of the western world will be wiped from the earth more sweepingly than the civilization of old Assyria" (p. 103). The story of the destruction of the "thought-people" by

Asiatics is a very clever piece of writing (pp. 103-107). In many respects the volume is an admirable statement of the case of Germany and a justification of her position; but it is hopelessly vitiated by special pleading and inaccurate statement. According to the author "it has become absolutely clear that the war was started by Russia and France and that Germany was in no way responsible" (p. 210).

Other books discuss interesting problems suggested by the war. In accordance with well-known ideas of the principal author is *War's Aftermath, a Preliminary Study of the Eugenics of War as Illustrated by the Civil War of the United States and the Late Wars in the Balkans*. By David Starr Jordan, Chancellor of Stanford University and Harvey Ernest Jordan, Professor of Histology and Embryology in the University of Virginia. Houghton, Mifflin, Boston and New York, 1914. Pp. xxxi, 104. It is a study founded upon information obtained in Spottsylvania and Rockbridge Counties, Virginia, and Cobb County, Georgia, based on answers given to a series of carefully prepared questions, and designed to examine the truth of Schiller's assertion, "Immer der Krieg verschlingt die Besten." The results, which are interesting but not absolutely conclusive, are supplemented by an account of things seen in the Balkans. The little volume is an able explanation of one of the worst effects of war.

One of the most original and constructive books suggested by the present situation is *War and Insurance, an Address Delivered before the Philosophical Union of the University of California at its Twenty-fifth Anniversary at Berkeley, California, August 27, 1914*. By Josiah Royce. With an Introduction and Notes. The Macmillan Company, New York, 1914. Pp. xlviii, 96. Following an idea of Kant, the author sees the explanation of the persistence of war among civilized peoples in what he calls the "dyadic, the dual, the bilateral relations of man and man, of each man to his neighbor," which are "relations fraught with social danger." "A pair of men is what I may call an essentially dangerous community" (p. 30). The remedy, so far as individuals are concerned, must be sought in a triadic group, or a group consisting of a principal, an agent, and a client. This suggests the idea of a "community of interpretation," which, under special forms, has already contributed so much to the progress of civilization, these forms being the judicial community, the banker's community, and last and most important of all, the community of insurance. And developing this thesis, Professor Royce suggests a scheme of international insurance, to be administered by powerful and inviolable trustees, which shall

insure nations against various disasters, perhaps even war. The book is tentative rather than conclusive: "Its whole present purpose is gained, in fact, if it leads to a serious revision of its own imperfections" (p. xi).

The long standing comment of historical scholars that there was no English translation of the writings of Treitschke attracted little attention until recently, when events gave a prominence to his teachings which they had never before obtained outside of Germany. The lack has been partly remedied. *Treitschke, His Doctrine of German Destiny and of International Relations. Together with a Study of His Life and Work of Adolph Hausrath. For the First Time Translated into English.* Putnam's, New York and London, 1914. Pp. xi, 332, is a translation of the biography written by his friend, and of some of his own more characteristic writings. The wonderful eloquence of Treitschke's style is manifest even in translation, in the difference between the biography and that which he himself wrote. Hausrath's account is a meritorious story of the life of his friend, in which the principal merit lies in the personal touch which his reminiscences allow him to contribute, but it is in many places confused and obscure, and even at its best not to be compared with the wonderfully vivid and suggestive portrait in the third lecture of Cramb. The selections from Treitschke's writings are well chosen for the general reader, particularly those which have to do with the army, with international law, and with German colonization. An explanatory preface is furnished by Mr. Putnam himself.

WHO MADE GERMAN OPINION?¹

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More terrible than an army with banners is the "people in arms;" for in these days that people is equipped with deadly weapons—nationalism, ambition, righteous indignation, revenge. The forging of that public opinion has been recognized abroad as a state task and as a responsibility of incalculable importance. If today the neutral onlooker is bewildered by the sight of several public opinions, fired by genuine zeal in behalf of diametrically opposed aims and based on mutually exclusive premises, it is evident that he is not only in the presence of irreconcilable interests, but is also enjoying unusual opportunities for

¹ Bernhardt, *Unsere Zukunft*; Oncken, *Deutschland und England*; Oncken, *Der Kaiser und die Nation*; Rohrbach, *Der deutsche Gedanke in der Welt*.

comparative study of that armament process by which this new war-implement, a people in arms, is produced. How and from whom do the peoples get the opinions that make them take up arms? Evidently here is a question of surpassing importance for the statesmanship of the future.

Whoever is constitutionally and internationally responsible for the bringing on of the present war, there is abundant evidence that it is not the Kaiser that is at war, not the Prussian military caste, but Germany. Furthermore the world knows now that German enthusiasm is not born of fear, of desperate defence against an overmastering fate: there is a positive ideal leading her. Her enemies call it aggression. It is not of much importance what she calls it; it is all-important for the world to know what this ideal is. For years, like every other people, Germany has been listening and reading and receiving guidance from those capable of giving it. The titles given in the footnote are presented as samples of the ingredients that thus went to make up that ideal in public opinion; as such they are of immense concern to one seeking to understand the present conflict.

The grim figure of Bernhardi has been made sufficiently familiar, in connection with his prognostications regarding the "Next War." This little brochure "Our Future" was brought out at the price of one mark, twenty pfennigs, for the avowed purpose of making those views accessible to *all* circles in Germany, and it includes comment on events subsequent to the more famous book. The first had been written with the purpose of enforcing upon an "unjustifiably optimistic" people the impending danger of an explosion such as was likely to bring on general war. In this brochure the issue of the Balkan war is recognized as having greatly damaged German prestige, both because of the connection of German officers with the Turkish army, and the altered situation for Rumania and Italy, but especially because Austria is left in an impossible situation regarding Servia, and because "it is scarcely to be supposed that the Triple Entente powers, borne on and impelled by public opinion, would not exploit their lucky situation in an attempt to use force upon Germany." The great crisis of our people requires sacrifice, to "maintain ourselves against a world of enemies, and make ready for a future that corresponds to our greatness and cultural significance." It should in fairness be observed that when he speaks of the Germans as "the real bearers of all modern culture," "as a culture-nation of the first rank, as *the* culture-nation *κατ'ἑξοχήν*," he is referring to the Germanic races, from whose influence he does not exclude Gaul and Britain and the nations that have grown up on those lands,

he only reserves an eminent and important, not exclusive position among the Germanic races for the present Germans, "together with the Scandinavian peoples."

This apostle of Treitschke-ism deals faithfully with England and her significance for the Germany of today. To our surprise we are told that England established free trade because she could not dispense with German enterprise; that it is largely German merchants who make the greatness of Hongkong, Shanghai and Singapore. But it is England that blocks Germany's path to colonial dominion and the fulfilment of legitimate ambition for settlement-colonies, where German emigrants may found centers of German culture, and not be mere culture-fertilizer for the enrichment of other empires. England's great world-competitor, it seems, is to be the United States, and looking to the future wars for Canada and Panama she must have safety from rear-attacks, which requires destruction of the German fleet, "the Alpha and Omega of English policy." Could England and Germany come to an understanding it must be on this basis: England's renunciation of the world-hegemony that she now claims, a "practical, not only theoretical recognition of Germany's equal right beside Great Britain," also a few trifling corollaries such as a free hand for German expansion on the Continent, for a confederation of Middle Europe or a war with France, a redistribution of North Africa in favor of Italy and Germany, no hindrance to Austrian policy in the Balkans or to German economic activity in Nearer Asia, and "finally no more working against German sea-power and German acquisition of coaling-stations." German-English relations adjusted on such a basis would assure the peace of Europe, would be a powerful counter-weight against the growing influence of America, and would afford a strong protection against the less civilized East European Slav-dom, and the yellow millions of the Far East.

But he finds absolutely no chance of England's seeing the light; she has deliberately assumed this attitude against Germany, her whole foreign policy gets its orientation therefrom; she has taken on obligations to France and Russia; she has distributed her fleet and supporting stations with Germany in view, her whole community is resolved to maintain British supremacy on the sea, and believes that it is because of the hostile disposition of the German nation. Worse yet, England's interest is to bring on the general war *soon*, before the completion of the Kaiser William Canal, before the race in fleet-building exhausts her, before the Italian and Austrian fleets become inconveniently strong. Hence she desires to involve Austria and Russia in the Balkans, isolate

Germany, and thus get all the trumps into her own hand, meanwhile setting forth her policy "as a disinterested and unselfish one!"

Very different is Professor Oncken, a student of modern history, whose scholarly authority goes far beyond Germany and whose "objectivity" has been recognized by his inclusion among the authors of the Cambridge *Modern History*. Any relevant utterance of his therefore may be entitled to more weight, though it will have less wide reading than those of the chauvinist cavalry officer. On the 25th anniversary of Kaiser William's accession Oncken addressed the university community of Heidelberg on "The Emperor and the Nation." The man, the ruler, the statesman were very acutely analyzed with especial reference of course to his political environment as it has developed since 1888. He declares it to be the characteristic historical position of William II that he widened Germany's view, beyond the Continent to include the world. He "let the fresh wind of the salt sea, of colonial adventure, of world-commerce connections blow into the close atmosphere of a people living thickly crowded together." This "new course" brought new problems. "The grandson of Queen Victoria, the admirer of English maritime greatness and of the English manner of life, when he raised Germany to a real naval power, could not help arousing against us the excited opposition of England." Amid diverse criticisms from radical and nationalist parties even at home he has pursued his course; "we are in sure and uninterrupted progress, and it is in good degree the work of the Kaiser."

The other book of Oncken's is founded on a lecture delivered early in 1912 to a section of the Navy League. In the historical relations of England and Germany he founds a powerful argument for strengthening Germany's force—not the fleet as his hearers doubtless desired, but the army, a consummation that was reached the following year under the stimulus of the Balkan war. He holds that by a natural course of evolution the German nation has arrived at a position where, of all foreign affairs, the relation with England has become the vital question. For centuries it has been a fixed habit with England to maintain the balance of power on the Continent; by devising coalitions here, by giving assistance or sowing dissensions there, to prevent any continental hegemony that should neutralize the advantage of her insular position, should possibly close the Continent to her trade, should even attack and attempt to reduce her to insignificance. In pursuit of this policy England has long been in special relations with Germany, maintaining a tradition of alliance with Hapsburg against Bourbon, at other

times throwing her support to the Hohenzollern instead, combining with both Hapsburg and Hohenzollern against the French Revolution and Napoleon. In these alliances however he is at pains to point out that the German invariably had to ply the laboring oar, acting as the Englishman's soldier and guardian, and was sometimes (for example in 1711 and 1762) left outrageously in the lurch. Since Waterloo there has been little occasion for this policy of defence against continental hegemony, but to the old conditions requiring predominant sea-power for insular defence there was now added her new colonial empire of unprecedented spread, "founded ever more exclusively on the one condition of mastery of the sea."

The new imperial Germany was of itself no menace to England. For want of sea-power it was harmless. On the other hand the age-long Franco-German hostility was as good as free life insurance to England, it "allowed English policy for the time even the luxury of complete isolation without danger." But after the period of supposed German "satiety" came Bismarck's colonial expansion of the '80s, in regions which England would fain have regarded as spheres of her own future interest. Simultaneously tension with France regarding Egypt and with Russia regarding Afghanistan and India was at its height. "Only an incomparable conjunction of world politics, constructed in masterly fashion by Bismarck, threw into our lap at that time German East and South-west Africa, Kamerun and New Guinea." "The German colonial policy is not an outcropping of chauvinistic and aggressive imperialism, it does not rest on the desire for profits of a capitalistic imperialism, it is simply the expression of a social-economic necessity." "In the service of this colonial policy we have created a fleet." But other people had other views. England saw "the mightiest continental power creating a great fleet; and remembering the systematic preparation for the wars of 1866 and 1870-71, she asked, against whom are the Germans preparing the fleet?" Hence, he concludes, founded in part on her own guilty conscience, England developed her Germanophobia, her dread of invasion, of a new hegemony, to be thwarted and crushed if possible by the customary measures. There followed the general liquidations with France and Russia, the alliance with Japan, the attempts to tamper with Constantinople and Prague and Pest, the agreement of parties at home, of Grey's foreign policy with Lansdowne's, the conversion of the whole Foreign Office and diplomatic service to King Edward's doctrine of isolating Germany.

"It was the Moroccan crisis that brought home to us the reality

of this new and successful system." Kiderlen-Waechter's play was rightly directed to the attainment of compensations in equatorial Africa; but in order to win he had to demand a share of Morocco instead, and let loose the pack of Pan-Germanists baying for Agadir. To the latter the outcome was a bitter disappointment, and the game was a risky one throughout. "But one thing may not be disputed: England's intervention diminished our chances of profit say by one-half, not out of special ill-will, but in fidelity to the fundamental idea of her policy inaugurated in 1904." We (Germany) experienced the pressure of an intervention which essentially weakened our pressure upon France. "In all parties and groups of the German people (including the Social Democrats) the feeling is sharpened that that must not happen again." Pacifist missions of clergymen, parliamentarians and journalists are vain: "I doubt if any groups or parties remain among us ready to enter into the service of the *pax Anglica*." "We must bethink ourselves of a more effective means of persuasion: that is the strengthening of our armament."

Professor Oncken's reasons for urging that the substantial increases be in the army rather than in the fleet have to do rather with English than with German public opinion. A scheme for naval aggrandizement would require a long time for realization, but its very publication would immediately start England to laying down two cruisers for every one of ours. "There is a maximum of fleet strengthening—on that we give ourselves no illusions—which might hurry England immediately to a declaration of war," a result embarrassing to us in view of the present state of Heligoland and the Kiel Canal. But of most importance is this consideration: an important body of radical opinion in the British parliament and people has been tending toward rebellion against Sir Edward Grey. "This opinion figures often as humanitarian-sentimental," the pro-Boer dislike of reaching mastery by crushing the weak. But there is also grave questioning if Grey is not paying too dear for England's opposition to Germany alone; reference is made to Persia and Mongolia; "He endures and submits to everything except a peaceful rapprochement with Germany." And what return has this policy brought? "Germany's deep resentment, chronic danger of invasion, an immense increase of fleet burdens and a never ending bill of expense in Asia." "Louder and louder sounds the cry *G. M. G.* (*Grey must go*)." . . . "Nothing would call out so quick a *reversal* of this rebellious feeling, nothing would bring before the English nation so true a justification of the policy of Sir Edward [a consummation eminently undesirable, from Germany's point of view]—as a German fleet bill on the

grand scale at this time." On the other hand everything recommends a strong increase of the army. It is easier to bear financially, and could be realized almost immediately. But also it involves the best assurance against English aggression, by holding France in check, cooling the revanche-ambition. But even more directly. "We know that the English in case of war think seriously of the application of their military force on the Continent, across the sea that they rule; we know their plans to land in Belgium, and if possible, allied with the French, fight against us another Waterloo." To increase Germany's army means not to raise England's panic, but to reduce her ill-will. "The inclination to negotiate is on the increase in English public opinion. Let us take care to strengthen it, with foresight and emphasis. . . . This means [army-increase] is the one adapted to weaken our world-opponent in the place most dangerous for us, the system of his continental balance of hostile forces. It is the means that serves the ultimate purpose of all policy,—peace."

Read in late 1914 this seems like bitter irony, but it is indubitably one of the elements on which ante-bellum German public opinion was fed. Its contradictions are obvious, but on one point there is certainty, *si vis pacem, para bellum*; with what result the world now knows—and condemns. If a generation of Germans has been taught to worship force as the highest reason, victorious expansion as national glory, Bismarckian diplomacy as statesmanship, what shall the harvest be, from such sowing of the wind?

The topic proposed by Dr. Rohrbach is "The German Idea in the World:" "the moral ideal substance of Germanism as formative power in the present and future of the world." "There is on this basis [moral ideal] a continuing process of selection of the fittest among world peoples, who succeed in realizing a bit of human progress by stamping their national ideal upon the world." The author is a man of very wide and long continued travel (in Africa, Turkey and China) and is a member of the teaching body of the Berlin College of Commerce. Publication at one mark, eighty pfennigs, makes the book available for universal reading.

The real aim of the book is not, as its title might suggest, an analysis of those elements of civilization that are characteristically German, but rather to put the crucially important question, "Is the Anglo-Saxon type destined to attain sole mastery in those parts of the world where development is still in flux, or will so much room still remain for Germanism that it also shall appear as a determining factor of future civilization, here and beyond sea? Furthermore we must make sure (1) what

we are in a position to do in order to elevate the German idea in the world, (2) what liabilities burden the nation, that must be reckoned with politically?" A ringing challenge is made to England, in full, admiring, frequently expressed consciousness of the worthiness of her steel, German traits that hinder are pitilessly exposed, and the sum of it all is an inspiring appeal for self-sacrificing effort, not in a combat of arms, but in fair, constructive, competitive service to civilization, by rival but mutually tolerant states.

National *growth* is shown to be a question of life or death, not necessarily a matter of boundaries, but one of world-intercourse, of trade with colonies or other peoples, of markets for the sale of manufactures, for the purchase of food. And it must be free growth; not a colonial empire and world-trade by England's grace, but self-maintaining, self-defending, not presumptuous but proportionate to Germany's significance and achievements. If antagonists choose to fight her in order to maintain monopoly, that is against Germany's desire; it is unnecessary from the world's point of view, but the possibility must be reckoned with—and prepared against.

Many disadvantages under which Germany suffers in the competition are described, some historical and external, such as Germany's pre-occupation with religious wars and attainment of national unity while other states had safe leisure to acquire world-empire and consolidate the power for keeping it: some internal and present and therefore fit to be preached against, such as extreme divisiveness in party and church, defective capacity for coöperation in industry; caste-pride and officialism, exclusion from political power of great social forces by the proscription of the social democracy, privilege to land-ownership, monopoly of the diplomatic service by the nobility; Prussian "brutality under the mask of snobbish smartness;" parochial narrowness of view, inability to think and act on the world scale as the English do, niggardliness in colonial investment and support of missionary effort, so efficient an instrumentality in spreading the Anglo-Saxon idea in the world.

As to colonies the author has good hopes, and from long residence and observation brings many sage bits of advice: there is to be no such rooting out of the aborigines as in America and Australia; the black is indispensable to the white, he is to serve him, and civilization requires that his resources be exploited by those who know how, with not too nice regard for native land-titles; the colonial administration is learning by experience, but there should be less Prussian bureaucracy, more elastic

self-government; South Angola is to become German as soon as Portugal comes to the point of letting it go, and it is to be expected that (not by force but by agreement) there will be still further revision of African boundaries in Germany's favor. He has a lively appreciation of the significance of such a frontier to the nation's life, of England's advantage, long enjoyed, from a considerable flow homeward of persons experienced abroad, soldiers, missionaries, merchants, officials, the national vision thereby sensibly and incalculably widened.

One-fourth of the book is taken up by the chapter on "Our Foreign Policy," which however, takes the form of an outline of recent events and an account of the other powers in their relations to Germany. It is a drama of contest with fate: "the fate of Germany is England": but the heavy villain of the piece turns out to be King Edward VII. This rival of Bismarck must needs "encircle" Germany with his alliances, and therein he is only meeting England's need, felt with increasing strength during the last decade and a half, to maintain her supremacy at sea against the one who challenges it. Working on the grandiose scheme of an empire stretching unbroken from South Africa to Australia, the Cape to Cairo railway completed by an annex from Cairo to Calcutta (!), King Edward recognizes the German-Austrian-Turkish entente and proceeds to create one to match it—Anglo-French-Japanese-Russian. Ready to buy German East Africa, to recreate Mesopotamian civilization, to divide up Persia, to bestow the califate of the Moselms on some British vassal prince, he would rearrange the scheme of the Bagdad railway so as to make it protect Egypt against Turko-German attacks (though from such arrangement Turkey would reap little economic advantage and much political detriment), and he would even risk a crisis by arranging with Russia an operation which should dismember Turkey, setting up an autonomous Macedonia. These plans miscarried by reason of the two great events of 1908, Turkey's revolution and regeneration and Austria's annexation of Bosnia, in which premature crisis Russia, yielding before the Kaiser's "shining armor" was tried and found wanting as an element of nefarious British policy. England had administered to her in 1904-05 a Japanese "cure"; it had taken only too good effect, so that her convalescence was now found to be still far from complete.

Competition in naval armaments naturally occupies the author's deep attention, and he constructs a fascinating argument on plausible evidences: its soundness depends on their real validity, and the comparative weight to be apportioned to them, all of which we are not yet

in a position to estimate conclusively. It runs somewhat as follows: Germany's phenomenal industrial and commercial growth have not only required corresponding development of a fleet to protect them, but have occasioned England's fear that her *supremacy* is threatened; the First Lord of the Admiralty assures Germany of England's peaceful intentions, but tells her that England's fleet is *necessary* to her existence, while Germany's is only a luxury (possibly tempting its possessor to aggressive use); but for evidence against these peaceful assurances the author cites witnesses, from Monck and the elder Pitt down to Arthur Lee, the *Army and Navy Gazette*, the *Morning Chronicle*, and the *Saturday Review*, all supposed to show Britain's desire to attack Germany's fleet (perhaps unawares, as at Copenhagen in 1807) at any rate before it is too strong, capture her trade, enriching every Englishman thereby, turn over Germany's continental possessions to Russia and France to seek their compensation; and thereby ensure the *pax Anglica*. *Germania est delenda*. The author does not suppose that this chauvinism really constitutes English opinion, but he recognizes its existence and influence as a factor, along with Churchill's peaceful assurances, and protests that Germany cannot live on such balance of factors in a foreign nation's opinion. England lets go without protest Roosevelt's desire for an American navy "second to none," but is aggrieved at Germany's naval preparation, and insists on laying down two keels to one. "We do not think of disputing the superiority of the English fleet to ours. . . . But at that moment when by 'supremacy' they understand that our vital interests in whatsoever part of the world . . . must yield to theirs, they compel us to fight them for our future, and that means for our national existence. If they would prescribe to us how far we may go in the world to spread our national ideal we should be cowards and fools to regard this prescription as binding for us without an appeal of arms. . . . What we need, and what we must have under all circumstances, with or without the good will of England, is a fleet of such strength that if England attacks, even in case of an immediate favorable outcome she risks her position on the sea. We must have so many ships that in all human probability even if England has conquered us, she will by her losses have given up her superiority over the other sea-powers still at hand. No English policy can let it come to that." From the German standpoint this is nothing but proper defense; it gives opportunity to both countries: "If the English will not admit that, but maintain their 'supremacy' in the sense of absolute superiority, even for attack, they show therein

that they are not willing to allow us political and national equality in the world. It is they, not we, who turn the screw of naval armaments higher and higher."

Military conquest is held to be no part of the German idea: if it were, that idea might be more easily communicated to the mob; but for practical and moral reasons that is out of the question. Germany is seeking higher, more real values. There is plenty of room in her colonies, in world-commerce, and especially in countries just now opening to western civilization, in the peculiar circumstances of Turkey and China, for peaceful realization of the German nation's task, "to permeate those parts of the world accessible to us with the spiritual meaning of our national ideal." England and Germany may share side by side in conquests of peace.

If Germany deceived herself by paying too much attention to what is only a portion of English opinion, if from a reading of striking but irresponsible and misrepresentative forth-puttings in the press she has imagined an England monstrously unlike the real, a mere hideous caricature, we may draw the obvious conclusion that nations' judgments of each others' purposes and ideals are subject to heavy discount before they can be used as foundations for policy; but equally necessary is it in the present case that Americans do not deceive themselves into thinking that Treitschke created German opinion: it is a very various compound, including among many other elements its Rohrbach as well as its Oncken and Bernhardi.

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Initiative and Referendum. State vs. Superior Court. (Washington, Sept. 21, 1914. 143 Pac. 461.) The determination of local officers that signatures attached to referendum petitions are genuine, is the decision of a political question and not reviewable by the secretary of state, to whom such determination is to be certified. The review by the court of the action of the secretary of state is confined to jurisdictional questions. A number of the legislative provisions regarding forms of petitions (number of names on each sheet, etc.) are held to be directory only.

Initiative and Referendum. State vs. Osborn. (Arizona, Sept. 18, 1914. 143 Pac. 117.) Courts can not restrain by injunction the

submission of a measure by the initiative upon the ground that the act if adopted would be unconstitutional.

Delegation of Power. Cutsinger vs. Atlanta. (Georgia, Oct. 3, 1914. 83 S. E. 263.) An act is not unconstitutional because it leaves the granting or refusing of a license to conduct a hotel or lodging house to the discretion of the municipal council without describing the bounds of such discretion, since the legislature contemplates the exercise of a reasonable administrative discretion, and an applicant for a license may seek the aid of the court under proper circumstances. Upon proper allegations the court may by injunction restrain the arbitrary exercise of discretion. The opinion fully discusses the law as to unregulated discretion.

Delegation of Powers. Commonwealth vs. Fox. (Massachusetts, Sept. 10, 1914. 106 N. E. 137.) It is competent for the legislature to vest in the police commissioner of a city power to designate streets or sections of the city wherein peddlers may exercise their calling; also to limit hours and prescribe other regulations for the plying of their vocation.

Statutes. Form of Enactment. Commonwealth vs. Illinois Central R. C. (Kentucky, Nov. 10, 1914. 170 S. W. 171.) An act is unconstitutional which omits the enacting clause prescribed by the constitution.

Statutes. Title. Adams vs. White Lead & Color Works. (Michigan, July 25, 1914. 148 N. W. 485.) The term "accident" in a workmen's compensation act does not apply to occupational diseases. If held to apply to occupational diseases the provision would be invalid as not being within the scope of the title ("providing compensation for accidental injury or death of employees.")

Statutes. Title. People vs. Quider. (Michigan, Oct. 15, 1914. 149 N. W., 1.) An act "relative to the loaning of money and prescribing rates of interest, penalties and forfeitures for violations, etc.," which also regulates in detail the business of pawn brokers and provides for issuing search warrants for stolen property believed to be in a pawnshop, covers more than one subject and does not express the subject covered within the title and is therefore unconstitutional.

Statutes, Proof of. Frederick vs. Morse. (Vermont, Oct. 14, 1914. 92 Atl. 16.) Statutes of other states should be proved by the production of the statute itself. If oral evidence is admissible (the court inclining against this view), it must be the evidence of a properly qualified person and evidence of his qualification must be brought forward.

Vested Rights. In re Grand Boulevard, etc. (New York, Oct. 24, 1913. 106 N.E. 631.) The legislatures may not provide that upon the filing of a map discontinuing public streets, a lapse of six years thereafter shall extinguish private easements of abutting owners and their right to compensation for the loss thereof. The statute does not provide for notice of the filing of the map to the owners, and some notice is essential to the maintenance of due process of law.

Civil Rights. Commonwealth vs. Karvonen. (Massachusetts, Oct. 23, 1914. 106 N.E. 566.) The Massachusetts act of 1913 forbidding the carrying in a parade of any red or black flag or any banner with an inscription opposed to organized government, is constitutional. The court quotes from Webster's Dictionary that historically a red flag has been a revolutionary and terroristic emblem, and from the Century Dictionary that a red flag is associated with blood or danger, and thinks that the legislature was justified in regarding such a flag as a symbol of ideas hostile to established order and the display of it as likely to provoke turbulence.

Civil Rights, Privileges and Immunities. Sacramento Orphanage vs. Chambers. (California, Sept. 26, 1914. 144 Pac. 317.) The legislature has no power in appropriating state money to institutions for orphan children, to withhold the benefit of such appropriation from children whose parents have not become citizens of the state. If the child has been born in the state and its conditions of residence are equal to those of other children, the status of its parents may not be made a basis for discrimination.

Police Power and Civil Remedies. Memphis Cotton Oil Co. vs. Tolbert. (Texas Court of Civil Appeals, Nov. 7, 1914. 171 S.W. 309.) Workmen's compensation act of Texas held constitutional. If the insurance provisions of the act are invalid they can be struck out and the rest of the act will stand.

Police Power. Labor Legislation. People vs. Solomon. (Illinois, Oct. 16, 1914. 106 N.E. 458.) An act requiring washrooms to be provided by owners of mines, mills, shops or other businesses in which employees become covered with smoke, grime, etc., is a valid exercise of the police power. A similar act passed in 1903 for coal mines alone had been held unconstitutional as class legislation (Starne vs. The People, 222 Illinois 189).

Police Power. Labor Legislation. State vs. Prudential Coal Company. (Tennessee, Oct. 31, 1914. 170 S.W. 56.) An act prescribing the payment of wages at stated intervals which makes the viola-

tion of the act a misdemeanor punishable by fine, is unconstitutional, since by operation of general law upon failure to pay the fine imprisonment would be imposed. The act violates the provision of the constitution that the legislature shall pass no law authorizing imprisonment for debt in civil cases.

Regulation of Business; "Blue Sky Laws." Ex parte Taylor. (Florida, July 8, 1914. 66 So. 292.) An act to regulate sales of stock and other securities by investment companies, is not unconstitutional because it authorizes certain examinations and findings by the comptroller and attorney general, and vests in them the power to grant or refuse to grant or revoke permits, all such powers being subject to judicial review whether so expressed in the statute or not.

A "Blue Sky" law of the State of Iowa was declared unconstitutional by the federal district court on July 6, 1914, (*W. R. Compton Company vs. Allen*, 216 Federal 537), while an act of Arkansas was sustained by the federal district court in that state on October 15, 1914. (*Standard Home Company vs. Davis*, 217 Federal 904.)

Municipal Corporations. Municipal Trading. Union Ice Co. vs. Town of Ruston. (Louisiana, May 25, 1914. 66 So. 263.) Under constitution, art. 224, the taxing power may be exercised by municipal corporations under legislative authority for purposes strictly public in their nature. Held that the construction and maintenance of a municipal ice plant by a small city operating water works and electric lighting is not strictly a public activity, and therefore can not be sustained. The court reserves its opinion as to the validity of the exercise of such power if it were shown that ice can be produced so cheaply in connection with the town electric light plant that it may be classed as a by-product.

Mandamus. State vs. The Board of Trustees, etc. (Wisconsin, Oct. 27, 1914. 149 N.W. 205.) Where the legislature has appropriated a sum of money for additional buildings the determination of a board of trustees of the institution that the construction of such building should be delayed, the present facilities being for the time adequate, will not be disturbed by issuing the writ of mandamus.

BOOK REVIEWS

The Validity of Rate Regulations, State and Federal. By ROBERT P. REEDER, of the Philadelphia Bar. (Philadelphia: T. and J. N. Johnson Company, 1914. Pp. ix, 440.)

This volume is a critical examination, in their present state, of the doctrines of constitutional law involved in rate regulation. As the chapter headings suffice to indicate ("The Commerce Clause," "The Distribution of Governmental Powers," "The Due Process Clauses"—2 chapters, "The Equal Protection Clause," "Just Compensation," "Impairment of Contracts," "Preferences to Ports," "Limitations upon Federal Judicial Power"), the work is one to interest not only students of the more technical problems, but also, and indeed especially, students of constitutional law in general. It may be added that both classes of readers will find the work well-written, exceedingly acute, and thoroughly documented. Upward of 1700 decisions, most of them of comparatively recent date and the great majority from the national Supreme Court, are cited in the footnotes, with precision, pertinence and unusually accurate knowledge of their content and bearing. A like thoroughness of acquaintance is also shown with recent monograph material, and an admirable disposition to acknowledge credit where it is due.

Nearly a third of the volume deals with the due process of law clauses of the Fifth and Fourteenth Amendments. In fine, Mr. Reeder squarely challenges that view of this clause which, by imparting to the term "law" in it a transcendental meaning, makes it generally restrictive of legislative power, and (essentially) of legislative power alone; and in the end he invites the Court to reconsider its position in this reference and to apply the Fifth and Fourteenth Amendments henceforth in their original sense.

Confined to the case of the Fifth Amendment, this criticism is entirely correct historically. Yet the heeding of it by the Court would, so far as rate regulation is concerned, produce but negligible results, for the Fifth Amendment also provides as against the National Government, that private property shall not "be taken for public use without

just compensation;" and, in judicial theory, the public regulation of railroad rates is based on the doctrine that the property of companies whose charges are regulated is devoted to a public use, for which, accordingly, just compensation is due, to wit, in the form of reasonable returns from the property so devoted. But also the admission of the same criticism with reference to the Fourteenth Amendment would be similarly resultless since, as Mr. Reeder himself appears to concede, the Equal Protection Clause of that Amendment standing alone, would afford a sufficient basis for judicial supervision of rate regulation by the States.

However, it cannot be admitted that applied to the Fourteenth Amendment, the criticism stated is valid. In this case Mr. Reeder relies largely on the *usus loquendi* of the Fifth Amendment. If, he says, the Due Process Clause of the Fourteenth Amendment, controls the State in the execution of its power of eminent domain, then why was the Just Compensation Clause inserted in the Fifth Amendment? The answer is furnished, of course, by the history of the Due Process Clause itself. When this clause was first inserted in the older amendment, it was not thought to be restrictive of legislative power in any sense, but by 1868 the fact was quite otherwise. Not only had the Supreme Court treated the clause as restricting, Congress' choice in the field of adjective law, but a considerable proportion of that Bench had also treated it as securing certain substantive rights. The same tendency moreover was also widely prevalent among the State judiciaries. But what is most important of all, perhaps, the newer view had received definite ratification from Sedgwick in his volume on Statutory and Constitutional Interpretation and in the first edition of Cooley's Constitutional Limitations. Mr. Reeder's demand, then, that the Court should henceforth construe the Fourteenth Amendment in accord with its original intention, seems to proceed from a mistaken view as to what that intention was. But the debates in Congress on the Amendment do not leave it open to doubt that its framers intended to impose upon the States at least as serious restrictions as those already existing against the National Government in the first Eight Amendments. True, a Supreme Court that had been bred in the States-Rights tradition, at first arbitrarily ignored this intention, but that fact is hardly to be urged against its later repentance in response to a different stimulus. Neither can it be seriously contended that the efforts of the Court to supervise State railroad rate regulation have, on the whole, worked counter to the public good.

Setting the multiplicity of the centers of legislative power in this country over against essential unity of its commercial, transportation and investment interests, one can scarcely question that the local governments ought to be kept within at least as strict bounds, when dealing with these interests, as is the national legislature.

And it is with like considerations in mind that one should weigh Mr. Reeder's criticism of the doctrine established in *Cooley vs the Board of Wardens of the Port*, that Congress' power over interstate commerce is within a certain sphere an exclusive power. Apparently this criticism ensues from the notion that the doctrine in question comprises from the point of view of the original intention of the Constitution, an unwarranted shackling of State power. The fact, however, seems to be the exact contrary. Writing Cabell in 1829, Madison declared that the grant of power to Congress "to regulate commerce among the several states . . . was intended as a negative preventative provision against injustice among the States themselves;" and words spoken on the floor of the Philadelphia Convention confirm this testimony. Actually, then, if we are to assume Mr. Reeder's position that the power to regulate commerce remains invariable even in the presence of variable subject-matter, the branch of the rule laid down by the Court in the *Cooley* case that most legitimately invites historical criticism is not that which asserts the exclusiveness of Congress' power in certain cases, but that which recognizes in other cases a concurrent State power over commerce among the States. Nor again, can it be easily questioned that in preventing an accumulation of local legislation calculated to block the advance of national power and of private interests reposing on the strength of such legislation, the Court has shown real statesmanship. Moreover, today the question has become largely academic. For not only has congress within the last few years taken actual possession of a goodly portion of the field of power that had been kept vacant for it by the Court, but the more recent formula of the Court classifies such State laws as are sustained, despite their incidental operation upon interstate commerce, as having been passed by virtue of the "police power."

My final criticism has to do with Mr. Reeder's evident assumption throughout his opening chapter on the Commerce Clause, that the distinction between interstate and intrastate commerce sets the same absolute barrier to the power of Congress that it does to that of the States (See especially pp. 38-39). This is a mistaken idea. Marshall recognized in *Gibbons vs. Ogden* that the National Government

could reach the purely internal commerce of the States for national purposes, and in the recent Minnesota Rate cases, which Mr. Reeder cites many times, the Court explicitly invites Congress to assume the task of regulating intrastate rates so far as may be necessary and proper to make good its power over interstate rates; and the still more recent decision in the Shreveport Case recognizes that Congress has already to some extent delegated its power in this reference to the Interstate Commerce Commission. Everyone must recognize that interstate and intrastate transportation are today processes so inextricably intertangled as often to be distinguishable only by the most transparent fiction. In view of this fact, it seems not unlikely that the day is near at hand when congress will boldly take over the regulation of, at least, all freight rates; and Justice Hughes' opinion in *Simpson vs. Shepard* strongly indicates that the Court is prepared to support the national legislature in such action.

The principal criticism then of Mr. Reeder's volume must be of a somewhat too rigidly maintained legalistic and States-Rights bias. Despite this fact the volume is a distinct contribution, both from the view of students of the matters with which it deals, and also from that of the advancing reconstruction of our constitutional law.

EDWARD S. CORWIN.

The Confederation of Europe: A Study of the European Alliance, 1813-1823, as an Experiment in the International Organization of Peace. BY WALTER ALISON PHILLIPS, M.A. (London and New York: Longmans, Green, and Company, 1914. Pp. xv, 315.)

This volume is a reproduction of a course of lectures delivered at Oxford in 1913. The author states that the object and scope of the lectures is not purely historical: "Their intention is, briefly, to illustrate from a particular period of history the problems involved in the practical application of the principles of international law, and my hope is that they may serve a useful purpose in helping to create a sound opinion upon questions which are too often discussed from a standpoint wholly out of touch with the realities of life." The author undertakes to show that the modern peace programs contain in them little that is new, but that "their genealogy can be traced back at least three centuries to the Grand Design of Henry IV of France. In dealing with the period between the Congress of Chaumont in 1813 and that of Verona

in 1822 we shall often meet, in diplomatic correspondence and works of publicists, the phrases 'General Treaty,' 'Universal Union,' 'International Police.' " The volume necessarily includes a full discussion of the idealistic proposals of the Emperor Alexander I. Mr. Phillips attributes more influence in the formation of Alexander's designs to La Harpe, under whom he studied the works of Rousseau, than to the Baroness Von Krüdener, of whose influence over his career historians have made so much. In this connection he quotes at length the instructions of September 11, 1804, to Novosiltsov, the Czar's envoy to London, written more than ten years before he met the Baroness. He considers these instructions the connecting link between the Holy Alliance and the peace projects of the seventeenth and eighteenth centuries. One passage from these instructions is indeed remarkable as an anticipation both in language and thought of the plans of present-day pacifists. (See p. 34).

Mr. Phillips also attaches far more importance than the general historians to the treaty of Chaumont of March 1, 1814. He says that this treaty is the "foundation upon which the Confederation of Europe in all its subsequent phases ultimately rested." One of the articles declared that the present treaty of alliance has for its object "the maintenance of the balance of Europe, to secure the repose and independence of the powers, and to prevent the invasions which for so many years have devastated the world."

The author makes constant reference to the difficulty experienced by the allies in managing and restraining the Emperor Alexander. Thus, when the allies were about to enter Paris after the first overthrow of Napoleon, Castlereagh, who was present, wrote to Lord Liverpool that "the Emperor has the greatest merit, and must be held high, but he ought to be grouped, not made the sole feature for admiration." The subsequent efforts of Castlereagh to "group" the emperor are narrated at length. In fact, the volume sets forth Castlereagh's policy with great clearness and exalts him to the front rank of the great statesmen of his day. Mr. Phillips claims that all Canning's policies were not only foreshadowed by Castlereagh, but that "Canning merely took up and developed the policy of Castlereagh."

The writer assumes an intimate knowledge on the part of his readers of the various treaties of alliance to which he refers, but the international politics of the period with which he is dealing are so very complex that he is sometimes a little difficult to follow. For instance, he fails to point out clearly the difference between the Grand Alliance and the Holy

Alliance, a distinction which should always be kept clearly in mind. It was not until the congress of Verona that the Holy Alliance assumed any importance, and its importance from that time on was due to the fact that in the preamble of the treaty of Verona the powers declared that treaty to be merely a revision of the treaty of Holy Alliance. Wellington's protest and withdrawal from the congress of Verona marked the final breakup of the alliance which had been formed against Napoleon. Henceforth England pursued a separate course, but as Castlereagh had foretold, the alliance had "moved away from England" rather than been deserted by her.

The chapters on Spain and her colonies and on the genesis of the Monroe Doctrine have an important bearing on the history and present policy of the United States. The author makes the interesting statement that both France and Russia wished to invite the United States to take part in the proposed conference of European powers which was to discuss the relationship between Spain and her revolted colonies. This suggestion seems to have come from Richelieu, who said the object was "to attach the United States to the general system of Europe and to prevent the spirit of rivalry and hatred establishing itself between the old and the new world." In reply Wellington stated that it was extremely doubtful whether Spain would accept the mediation of the five powers, and that without such acceptance it was useless to approach the United States. There is nothing particularly new in his discussion of the origin of the Monroe Doctrine. He seems to think that the Monroe Doctrine, which was originally a doctrine of non-intervention, has been converted into a principle of active intervention by the United States for the maintenance of order on the American continent. He points out that the effective working of an international federal system like the European alliance demands a far greater uniformity of political institutions and ideas among the nations of the world than at present exists, and he thinks that President Wilson's action in regard to Mexico foreshadows a demand on the part of the United States that the constitutional organization and political principles of every American state shall conform to those of the United States.

So far as the general peace movement is concerned, the tone of the book is decidedly pessimistic. The author's comparison of the European Confederation of 1813-1823 with the modern proposals for an international court is, it seems to me, subject to many qualifications. Owing to the wholly anomalous condition into which Napoleon had thrown the states of Europe, the Confederation had necessarily to deal with the

internal affairs of the several states. The congresses that were held from time to time were objected to by Canning as "congresses for the government of the world." They were concerned not with general questions of international law so much as with the internal status of States. What the well-informed and rational peace advocates of today hope to see established is not a congress for the government of the world, but an international court which will settle those questions which are capable of judicial settlement and whose decisions will form the basis of a body of public international law.

JOHN H. LATANÉ.

"L'État et les Fonctionnaires: Études Economiques et Sociales, Publiées avec le concours du Collège libre des Sciences sociales."

By ALEXANDER LEFAS. (Paris: Giard et Brière, 1913. Pp. lxxix, 397.)

This book is another addition to an already extensive literature dealing with the French civil service and especially with the miserable condition of the functionaries. For many years they have loudly complained of their meager pay, the insecurity of their tenure, and the abuses of favoritism and arbitrariness on the part of their hierarchical superiors in respect to appointments, promotion, and discipline. They demand the enactment of a law which shall guarantee them against these abuses; and to enforce their demands upon the government they have organized themselves into numerous and powerful associations. In some cases they have indeed gone further and formed syndicates (legally a very different kind of organization from the association) and have insisted upon the right to negotiate with the government, to dictate the terms of a contract with it and even to strike, following the practice of syndicates among laborers. By reason of the large membership of these organizations and the somewhat revolutionary and anarchistic character of the syndicates the government has felt obliged to take action for its own protection. Generally, it has recognized the lawfulness of the associations but except in some rare instances, it has forbidden the organization of syndicates and has dissolved those that were formed.

In respect to the matter of salaries, the complaints of the functionaries are well founded and popular sympathy is generally on their side. With a few exceptions their "traitements" are miserably small, the average for the entire body of state employees scarcely exceeding \$500 per year. For many thousands indeed the salary does not exceed \$250 per year,

the scale being substantially what it was fifty years ago. Their small income undoubtedly accounts for the fact that the size of families among functionaries is smaller than that among any other class of the population, the average being one and a half children to the family. While the budget for the civil service has greatly increased in recent years (it now amounts to about \$200,000,000 per year, or substantially one-fifth of the total budget of the State) there has been little or no increase of official salaries. This is explained by the enormous increase of the number of public employees which has entailed so heavy a burden upon the State that no government has felt able to raise their pay although there has been a general desire to do so. Everybody in France admits that the number of employees is excessive and that the remedy is to reduce the number and increase the salaries of those who are left, but this sensible solution has not been adopted. Balzac in his day complained that the number of state employees had attained the figure of 40,000; today the number is in the neighborhood of 1,000,000 or an average of one functionary for every forty persons in the republic. Under an over liberal pension system which permits employees of the State to retire after twenty-five years of service, the number of civil *pensionnaires* has reached 315,000 and the pension budget has risen to \$20,000,000 a year. The remedy, as M. Lefas justly observes, is to reduce these burdens by abolishing a large number of useless offices. This can be done by reforming the whole administrative system and especially by decentralizing the administration and by abandoning the system of administrative *paperasserie* which requires the services of thousands of employees who are occupied in the preparation and copying of useless papers. This done, the State will be in a position to respond to the just demands of the functionaries for more adequate compensation for their services.

Favoritism and arbitrariness in respect to appointments and promotions, says M. Lefas (p. 67), is the *bête noir* of the functionaries. In too many cases young attachés in the ministerial ante chambers are preferred to older and more experienced candidates who have served their time in the departments or who have passed the examinations with credit. In France there is as yet no civil service law such as one finds in England, the United States, Germany, and other countries, which regulates the conditions of appointment and promotion, which classifies the employees and determines their salaries on the basis of such classification and which protects appointees from political influence, favoritism and arbitrariness on the part of the government. All these matters in

France are regulated, so far as they are regulated at all, by ministerial decrees and orders, each minister being free to prescribe such regulations for his own ministry as he pleases. It is true that whenever a decree of this kind has been issued the council of state will compel its observance by annulling all appointments and promotions made in violation thereof, but what one minister can do his successor can undo. It results therefore that each incoming minister issues a new decree embodying his own ideas on the subject, and there have been cases where a new minister suspended the existing decree in order to find places for his own favorites, after which the old decree was reissued. Under such a system there is no uniformity of policy; the functionaries in one department have a status entirely different from those of another department and of course there is no security of tenure. The functionaries as I have said, demand the enactment by Parliament of a law which will protect them against the abuses mentioned and their cry has made itself heard in the country at large. The question of ameliorating their sorry condition was one of the principal issues in the election campaign of 1910 and a majority of the deputies elected had in their *professions de foi* expressed themselves in favor of granting some or all of the demands of the functionaries. Several governments, notably those of Clemenceau in 1906 and Briand in 1910 promised the functionaries such a law but like so many French cabinets they went out of power with their promises unfulfilled.

The whole history of the question: the grievances of the functionaries, their demands, the civil service legislation of other countries, the various *projets* that have been introduced by different cabinets and the reports that have been made thereon by parliamentary commissions, is reviewed in detail in M. Lefas's book. Altogether it is a substantial study of a live and important question of French politics.

JAMES W. GARNER.

The American Doctrine of Judicial Supremacy. By CHARLES GROVE HAINES. (New York: The Macmillan Company, 1914. Pp. xvii, 365.)

Prof. Haines sets out "to present in brief compass the history, scope and results of judicial control over legislation in the United States." His book does not pretend to be based on original investigation, although the author has in some cases contributed new materials, and has in others viewed his problem in a new way.

The avowed purpose of presenting "the history, scope and results of judicial control" has not been fully met. To judicial control before 1830 the author devotes about two-thirds of his book. Upon developments between 1830 and the present time there are three scant chapters. To recent criticisms a chapter is given, and there is a very brief discussion of the rules under which courts act in exercising a power to declare laws unconstitutional. This apportionment of space is clearly not adjusted to the relative importance of the several topics, and the several parts of the book must almost necessarily be judged by different standards.

The larger part of the book—that devoted to judicial power before 1830—is well done, and is a valuable addition to the literature of the subject. The author is familiar with all of the more essential discussions, and has handled his subject with judgment. This part of the volume is not without error, but the general result is satisfactory. For this earlier period attention should be called to the fact that the list of state cases before 1820 (pp. 73-77), while not claiming completeness, is less complete than it should be. The statement (p. 82) that courts had gone a long way toward the establishment of judicial supremacy before *Holmes vs. Walton* is open to question. The courts of New York did discuss and approve the principle of judicial control before 1819 (p. 119). Legislative protest against a Georgia decision of 1815 should have been mentioned in the discussion of opposition to the practice of judicial control. These, however, are but minor defects in an otherwise satisfactory discussion.

But the historical treatment of the period from 1830 to the present time is fragmentary and unsatisfactory. In the first place the author devotes his attention almost exclusively to the supreme court of the United States for the period between 1830 and 1870. The judicial function of the federal courts was relatively less important during this period because (1) the court under Marshall had already done the important work and had in some respects gone too far in its limitation of state power and (2) the federal courts fell into the background on account of political conditions and the war. But the essential developments of judicial power were in the state courts and are almost entirely ignored; what the author has upon these developments is not accurate. The reiterated statement that the democratic movement caused a material reduction of judicial control in the States between 1830 and 1860 is not in agreement with the facts; and it can hardly be admitted that judicial power over legislation during this period was confined mainly

to North Carolina, Massachusetts, New York and New Hampshire (p. 262).

The period from 1870 to the present time is not covered in such a manner as to give a satisfactory knowledge of real developments. This is due in large part to the brevity of the treatment, but also to statements which appear to be hardly accurate. For example the extension of judicial power during this period is due not so much to the development of extra-constitutional limitations as to the reading of natural right theories into constitutional limitations which are themselves indefinite (p. 289 *et seq.*).

In the final chapter, dealing with recent criticisms of judicial power, the part devoted to criticisms by the courts themselves (pp. 313-328) is very well done, but the chapter as a whole is inadequate. The weakening of judicial power came not as a result of dissenting opinions but as a result of the judicial action which occasioned the dissent (p. 315). The Illinois case of 1895 upon hours of labor of women was not reversed (p. 329), however much the view of the later case may differ from that of the earlier. There is no adequate analysis of the movements for the recall of judges and of judicial decisions. The author does not indicate sufficiently that a movement is already well under way among the courts themselves to apply more liberal tests in passing upon the validity of social and industrial legislation (pp. 334, 352).

But a part of one brief chapter is devoted to the rules under which courts act in passing upon the constitutionality of statutes (pp. 173-199); the traditional statements, which to a very large extent do not agree with the facts, are here repeated. Upon judicial control in other countries there is merely an incidental discussion, and no complete or accurate statement of the situation in other countries is given (pp. 2-10, 197).

Upon the whole, it should again be said that the greater part of the book (that dealing with the period before 1830) is of distinct value, while the remainder is of much less importance. The volume does, however, present the best connected account of the origin and development of judicial power in the United States.

W. F. DODD.

Law, Legislative and Municipal Reference Libraries. By JOHN B. KAISER. (Boston: Boston Book Company, 1914. Pp. 467.)

In a volume entitled "Law, Legislative and Municipal Reference Libraries," Mr. John B. Kaiser, librarian of the Tacoma public library,

formerly legislative reference librarian of Texas and sociology librarian of the University of Illinois, has brought together a wonderful array of material and has presented it in such a thorough and painstaking manner as to have completely preëmpted the field connected with the subject. The book is complete in scope and accurate in detail and it is right down to the minute of its publication in May, 1914.

A comprehensive book was needed on the subject. Heretofore, library workers in this special field began blindly or upon blind experience. Particularly was this true of law libraries—perhaps the most backward and inefficient in all the range of library activity. Little has been written about the law library and few aids have been provided for law librarians or for law students. Only the most superficial knowledge of the use of the law library has been given in law schools. It is to be hoped that this book in the hands of law librarians and professors of law will bring about a new attitude among law students toward the sources of legal information.

The treatment is concerned with needs and types of law libraries; the kinds of material; and the handling of material, including methods of cataloging and shelving. Court reports, state and federal, and digests, text-books, law periodicals, public documents, statutes, and legal bibliography are explained.

To all law libraries, whether large or small, the book is of great value, while to the students of law and of library methods it is indispensable. It should have the most wholesome effect upon public libraries in lifting them out of their fear that legal works will contaminate their shelves. The book should have contained a plea to public librarians to get acquainted with legal bibliography and to treat law books as a possible part of their reference departments.

The chapters on legislative and municipal reference libraries set forth the large place which these institutions have come to fill and furnishes a guide for the hundreds of new institutions of this sort which are springing up every day in connection with state and city libraries, chambers of commerce, welfare departments, and social and civic clubs.

Again it must be said that the field has been preëmpted. Little can be added either in general discussion or specific aids. The librarian will find everything needed from the discussion of the need of such libraries to the selection of pamphlet holders.

The history of the idea of legislative and municipal reference is given in its application to intelligent legislation; the materials are criticized and bibliographic helps added; the methods of collecting and preserving

material are described in detail and the agencies which help the work receive generous approval; and the actual process of preparing for a legislative session, the drafting of bills, and condensing of information for legislators is outlined. Discussions of the qualifications of librarians, the success and profits of the work, and the methods of coöperative effort are given considerable space.

Valuable appendices are added giving compilations of laws relating to legislative and municipal reference work and bill drafting, lists of legislative reference publications, bibliographies of legislative and municipal reference, and bill drafting besides suggested problems for use in class work in library schools.

If the book has faults we must pass them over in admiration for the completed work. To bring all that the author has brought together within the covers of a single book of 467 pages, is a feat which challenges any adverse criticism. It has blazed a trail and in its description of the purposes, methods and results of these types of special libraries it has greatly facilitated the work of hundreds of other special libraries in business, finance, manufacturing and public affairs. The underlying purpose of all special libraries is to focus knowledge on a given problem. By showing how law, legislative and municipal reference librarians and bureaus may do this all other libraries seeking the same purpose in other fields profit by comparison.

JOHN A. LAPP

The Neutrality Laws of the United States. By CHARLES G. FENWICK. (Washington: Carnegie Endowment for International Peace, 1913. Pp. 201.)

The trustees of the Carnegie Endowment for International Peace in 1911 directed the division of international law to examine the neutrality laws of the United States, and to suggest improvements tending to make them more efficient. The result is this book, in which Dr. Fenwick has ably fulfilled the task assigned him. The book must meet to the full the expectations of the trustees, as it does the anticipations of those who look to the endowment to produce work of the highest merit.

The character and scope of neutrality laws is explained, and these are distinguished from the international obligation of neutrality which they are designed to meet. The neutrality laws of a state may or may not conform to the international standard of neutrality. If they exceed that

standard, they entail no additional obligation to other nations except that of impartial application. If, on the other hand, they fall short of that standard, the international obligation continues unchanged, and the neutral is in the unfortunate position of being responsible to other nations for situations which, under its municipal laws, it cannot prevent.

The history of the development of the neutrality laws of the United States is recounted, and is followed by a consideration of their judicial interpretation, for the purpose of showing the exact restrictions imposed on citizens and aliens. American and British documents are appended.

From this examination, it is concluded that there are a number of acts which a neutral state is bound by international law to forbid, which are not covered by the present neutrality laws of the United States. These deficiencies are due partly to the formulation of stricter international principles of neutral duties and partly to changes in the methods and instruments of war.

Among the acts which involve a hostile use of neutral territory, but which are not now indictable under the laws of the United States, may be mentioned the exercise of a commission obtained abroad, solicitation or inducement to accept a commission or to enlist in belligerent service, the building of vessels for hostile use (without fitting them out), and the furnishing to belligerent vessels of large quantities of provisions, coal, and other non-military supplies not included in the existing prohibition of "equipment solely applicable to war." These and other suggestions are embodied in the concrete form of a draft of an amended neutrality code for the United States, following as nearly as possible the language of the act now in force.

If there is any question as to the timeliness of this publication in view of the present European conflict and of the difficult duty of neutrality incumbent upon the United States, it can be only as to the scope of the work undertaken. Specific neutral duties, arising from the recent use of the air in great part, have come into being since our laws were written. The use of wireless telegraphy is a case in point. The international rule as to naval craft is fairly established; but no specific rule is applied to aerial craft. If it is allowable to prepare an aeroplane for the military use of a belligerent, is it permissible to build and equip for war a Zeppelin? The latter is probably a more formidable war machine than a torpedo-boat destroyer. Although the duties of neutrals in such matters may not as yet have been defined by international law, they nevertheless exist under that law, and the United States is

as responsible for the enforcement of a correct decision as though the international principle were already more clearly formulated. Our country should decide what its duties are and enact the necessary legislation to fulfill its conception of them. The scope of the present work has been limited to the remedy of defects discovered through past experience, and does not propose legislation to meet the obvious difficulties of the future, some of which have materialized since the appearance of this book.

It would be ungrateful in the extreme, however, to insist upon the possibility of broadening the scope of a work which has been so excellently done within the limits proposed. Dr. Fenwick is certainly to be congratulated.

ROBERT T. CRANE.

An Economic History of Russia. By JAMES MAVOR. (New York: J. M. Dent and Sons, 1914. Vol. I, pp. 614; vol. II, pp. 630.)

Mr. Mavor's work has been out for several months, and has received very favorable comment from many quarters. It helps to fill a large gap; we have few solid studies of Russian economic and political conditions that are accessible to the student who can not go to the Russian sources. This very fact was probably responsible for the kind of book the writer felt called upon to give us. Perhaps his treatment by topics was the most satisfactory method for handling the problem that confronted him. It then became a question of arranging the material within each chapter, paying less attention to the sequence of the chapters.

The sources used by the author are most varied in character. In the first place Mr. Mavor has spent considerable time in Russia, and has observed for himself. Here he has shown keen judgment and careful discrimination. Then he has used very freely the best general history of Russia, that of Kluchevsky. This entire work, perhaps the best that recent Russian scholarship has produced, has been translated into English, the fourth and last volume being in the last stages of preparation. Mr. Mavor had begun his work before this translation was undertaken. For the earlier periods the writer uses similar, acknowledged Russian authorities on more special subjects, as for instance the works of Semevsky, on the peasant question. This is one of the most valuable sides of the work before us; it familiarizes English readers with the writings of Russia's best scholars.

There are certain books which every student of Russian history must use. The best account of the history of the social Democratic party in Russia is that of Lyadov. To understand the interesting movement of the seventies of the last century, the so-called "movement to the people," the reminiscences of Debogory-Mokreyevich are invaluable. Mokreyevich took a prominent part in this movement, but he describes it with remarkable clearness and impartiality. Other similar books could be enumerated. Here again Mr. Mavor has done a great service by giving full excerpts and citations from these books. He has shown excellent judgment in the selection of his materials.

The writer does not confine himself to purely economic questions. He gives a chapter on the political police system that produced a man like Azev, who was at the same time in the terrorist organization, and in the employ of the government. He analyses the "rationale" of this system very clearly: "An autocratic government is obliged to make itself aware of oppositional movements in time to counteract them, whether these movements are intended to have a violent issue or not. The police system, with its espionage, is thus an incident inseparable from autocracy. . . . The transition from espionage to 'provocation' is inevitable; for the spy who has gained admission to the center of a revolutionary organization, must act as a revolutionist, or he would be immediately suspected. The 'perfect spy' must not betray continuously, therefore, but only occasionally, in order to prepare a magnificent *coup* in which the revolutionary movement should be altogether crushed." In a note Mr. Mavor suggests the argument that "the system of espionage is inseparable from government per se, the chronic condition of crisis through which the Russian government has been passing for upwards of a century merely accounting for its special manifestations in Russia."

A chapter on "Police Socialism" gives an interesting picture of another somewhat similar method of procedure practiced by the Russian police authorities. It describes the ideas and activities of a certain Mr. Zubatov, who has given his name to all methods of this type in Russia. The police organized the workmen into unions, and ordered the factory owners to employ only union men. The police dictated the conditions of employment, and also fixed the wages. But the "policy of controlling the labor movement, and of separating it from the revolutionary movement—that was the idea of Zubatov's manoeuvres—with the design of turning it to the account of autocracy, came to a disastrous end."

The chapters on various aspects of peasant conditions are some of the best in the book. The writer states the general character of the important agrarian reforms now in progress in Russia.

There is one question that one would expect to find treated in an economic history; it is the question of commercial treaties, and of tariff and protectionist policies. This point has been of particular interest these last years, and the negotiations preliminary to the renewal of a commercial treaty between Russia and Germany were a considerable factor in creating the state of mind which accounted for the attitude taken by the Russian public in the present crisis. The policy of Berlin to keep Russia in a kind of economic dependence on Germany, had created much feeling in Russia. Again we find no mention of the recent legislation with regard to workmen insurance. This law, it is true, was passed only recently, and is still in the first stages of application. But it shows what Russia is doing in this line, and some of the provisions in the Russian law are novel and interesting.

On a few minor points the reviewer feels that a word of criticism is necessary. There are several bad mistakes. The Franco-Russian Alliance is spoken of as an Entente. The great reactionary adviser of three emperors, Pobedonotsev, is indicated as still alive. Again in the matter of transliteration of Russian terms and words, there is lack of system or uniformity, all of which points to inadequate revision, which is particularly unfortunate in a work of this character. The abbreviation of Russian terms, such as "gub," is annoying. We are now having more serious studies of Russia; it is therefore time that English writers adopt the system of their German and French colleagues, and *transliterate* the titles of the Russian books cited. It is very difficult to reestablish the exact title from a translation, and only those who know Russian can use the references. A translation of the title might be added, to show the general character of the book cited, for the reader who does not know Russian.

This important contribution to the meagre literature on Russia accessible to the general student, is most welcome. It is easy to pick out important oversights in a book covering so long a period and so many aspects of the life of a country. But such books are necessary at the beginning, and we are at last at the beginning of an effort to develop the serious study of things Russian, both in England and in America.

SAMUEL N. HARPER.

Outlines of International Law. By CHARLES H. STOCKTON, Rear-Admiral U. S. N., Retired. (New York: Charles Scribner's Sons, 1914. Pp. xvii, 616.)

To those who are familiar with the activity of Admiral Stockton in the field of international law for many years past it will be a matter of sincere gratification to find that he has at length found it possible to supplant his earlier brief "Manual of International Law" by a thorough and comprehensive treatise upon the subject. As delegate to the London Naval Conference and as lecturer during many years at the George Washington University, the author has had experience in constructive as well as in didactic work upon the problems of international law. He has not, however, sought to give us a treatise based upon individual research work in all of the many branches of a greatly ramified subject, but has rather chosen to collate from existing works, to rearrange, to present obscure questions in clearer form, to criticize and to comment. International law is not a fixed code—it is a law which is being made and developed as each year goes by. Even if it were proper to look upon the Hague conventions as equivalent to statutory law (and the lack of general ratification forbids our doing so) the terms of many of these conventions are too general and indefinite, too much in need of an interpretation to govern their application to actual conditions, to make it possible to pronounce finally upon their meaning. Hence while the individual sections of the field of international law need to be made the subject of detailed treatment in monographic form, the field as a whole offers opportunity for a general study in which the underlying principles and larger tendencies shall have due prominence in the midst of the variations of usage and practice. It is in this latter respect that Admiral Stockton's work will be of special value at the present time.

In discussing the laws of war on land the author is careful to remind the reader that while the Hague convention upon that subject has been ratified by "practically all of the civilized states of the world" (Italy, Servia and Turkey are notable exceptions), the regulations are only binding between the contracting parties. It cannot be too often repeated that the Hague code must not be looked upon as a final statement of positive law, but must be read in connection with the customs and usages preceding the year 1899. It is interesting to note that the author frankly recognizes that certain articles (Art. 18 and the last clause of Art. 60) of Lieber's code have become obsolete. The same

remark might have been made with regard to Article 26 of the code (quoted on p. 301) and with regard to Article 36 of the code, if the Hague convention (Arts. 45 and 56) is to be taken as the standard. The reality underneath some of the rules of the Hague code appears when the author points out (p. 314) that in view of the many ways in which the property of individual citizens may be taken over by a hostile military occupant the so-called exemption of private property from capture "may be called almost nominal." In discussing some of the unsettled questions of international law the author points out that privateering is a thing of the past and that it is high time for the United States to give its formal adhesion to the Declaration of Paris. He justifies the action of the United States in not signing Convention VI relative to the status of enemy merchantships at the outbreak of hostilities, pointing out that the new rule is not as liberal as the old one. As between the advocates and opponents of the right to convert merchantships into warships on the high seas, he favors the Italian compromise that such conversion should be limited to ships which left their last port of departure before the commencement of hostilities.

If in the occasional loose construction of its sentences and in its superfluity of quotations (the author's own works, previously published, being often quoted where they might have been paraphrased), the work bears traces of a hurried revision, the general public will readily overlook such minor defects in consideration of the service which has been rendered it in placing at its disposal during these critical times a treatise which is at once readable in form and authoritative in content.

C. G. FENWICK.

— *Die Judikature des Ständigen Schiedshofs von 1899–1913.*

Dritter Teil. (München und Leipzig: Duncker und Humblot. 1914. Pp. 368).

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+ This volume belongs to the series bearing the general title "*Das Werk vom Haag*," edited by Professor Schücking of the University of Marburg, of which two volumes, *Der Staatenverband der Haager Konferenzen*, by the general editor, and *Das Problem eines internationalen Staatengerichtshofes*, by Hans Wehberg, have already appeared. It forms the third part of a volume which deals with the decisions of the Hague Permanent Court of Arbitration during the period 1899–1913 and which is itself the first of a series which is to embrace the judicial decisions of The Hague as a whole. It includes the Orinoco case by Otfried Nip-

pold, the Savarkar case by Josef Kohler, the Canevaro case by Ernst Zitelmann, the Russo-Turkish case by Christian Meurer, and the Carthage-Manouba case by Theodor Niemeyer. Each case is preceded by a bibliography of works relating to it. In all but the Canevaro case the order of treatment consists in a statement of the facts of the dispute, the procedure adopted for the settlement of the dispute, followed by the award of the judges and a criticism or estimate of it. In the Canevaro case Professor Zitelmann first summarizes the facts and presents the award and then proceeds to discuss in detail the questions of international law, both public and private, which are raised by the case.

There can be no question but that the present volume together with the two which are to accompany it will be of great service not only as contributing to the further development of international law by offering precedents which may serve as rules of conduct, but principally in manifesting the feasibility of international arbitration as a means for the prompt and just settlement of international disputes upon a judicial basis. In answer to those who assert that international procedure is too slow ever to become a satisfactory method of adjusting disputes between nations, it may be observed that in the Savarkar case the period between the conclusion of the compromise and the rendering of the award was but four months, in the Carthage-Manouba case one year and three months and in the Orinoco case one year and eight months. Adjudicated cases have, it is true, no power of themselves to create a standard of international practice, but if the awards they embody are intrinsically reasonable they cannot but commend themselves to the legal and moral sense of the nations and thus lay the basis whether for international custom or for codification into formal statute law.

C. G. FENWICK.

Municipal Life and Government in Germany. By WILLIAM HARBUTT DAWSON. (London: Longmans, Green and Company, 1914. Pp. 507).

One naturally turns with eager interest to a work on Germany at a time when we are told on every hand of the despotism of her political institutions, when, in a word, we are led to wonder whether anything we ever learned that is creditable to Germany, is really true; and our interest is heightened in this case by the fact that the author is an Englishman whose work has occupied his attention, so he tells us, at intervals

during a period of twenty-five years and was brought to a conclusion at the outbreak of the great war. The book, however, bears no trace of hostility, for the author is in sympathy with his subject and frankly admits his admiration for German municipal institutions—especially on their administrative side. “Impressed by the larger autonomy of German towns,” he asks “whether in this country (England)—the proverbial home of free institutions—we yet really understand what true self-government means?” Nor is the favorable impression due merely to the results achieved by the German municipalities, which, we are often told, are not due so much to a spirit of local initiative and independence as to a bureaucratic system which carries with it the defects of its good qualities, among them, a loss of vital contact between the government and the people. But the fact is that in no other country does the central authority so completely throw the responsibility of government upon the local community, and nowhere is this responsibility so wisely and efficiently met. This, in a word, is the cardinal conclusion to which a careful reading of the work leads us. Another striking fact, shown throughout the work, bears testimony to the wisdom of Stein in framing a municipal code when the population of Prussia was largely rural (1808), so elastic and adaptable that with no fundamental changes since then, it has met the conditions of the urban population of the present time. While claiming no superiority for the German electoral basis of local government over that of England, the author believes that “the institutions of the professional and salaried mayor and aldermen (magistrat) represent the highest and most efficient development of municipal organization reached in any country.”

The first four chapters deal with the history, the organization and machinery of municipal government and the distribution of administrative powers; land and housing policies, town-planning, public health, trading enterprises, poor relief, social welfare, and intellectual life, are chapter-headings of another phase of the work; five chapters are devoted to the subject of finance and taxation, while a final chapter brings together some conclusions and comparisons with English conditions. The last forty-six pages are devoted to appendices illustrating typical legislation, regulations, by-laws, programs and an index. While German literature of every description has been freely used, the work bears much evidence of first-hand observation from life and actual practice, and, in the opinion of the reviewer, it is the most informing work upon German municipal government that has appeared in English.

KARL F. GEISER.

America and the Philippines. By CARL CROW. (New York: Doubleday, Page and Company, 1914. Pp. xi, 287.)

This is the latest addition to a class of books that is becoming rather numerous. It is profusely illustrated, is written in a clear, animated style and on the whole accomplishes its purpose of giving a fair account of what Americans are doing in the Philippines. Mr. Crow admits that despite the material benefits conferred by American rule, the Filipino people hate us and he goes farther than most writers on the Philippines in telling why. Here is an instructive passage:

"My pride in American administration was rudely shattered by a visit to a Manila police court. The magistrate, an American, presided in his shirt sleeves. He had evidently not been shaved for twenty-four hours, and he rolled and smoked cigarettes while hearing evidence. Of course his coatless, unshaven condition and his cigarettes probably did not interfere with the precise operations of his legal mind, but it added nothing to one's conception to the dignity of the law. The sight of this disordered courtroom came as a decided shock after several years of observation of the dignified British courts of the China coast. The comparison was equally striking when, on the following day, I visited a justice court, presided over by a Filipino. He was freshly shaven, his collar was clean, he ate no toothpicks and smoked no cigarettes while on the bench, where he presided with dignity, and, I presume, with justice."

But all the same the color line is drawn against the Filipinos with the utmost strictness and as nothing of the kind was experienced under Spanish rule the Filipino gentry are naturally affronted. Human nature is so constituted that insults are resented more than injuries. Although American rule in the Philippines has aimed at introducing American speech and political methods, it remains a system of alien control maintained by force over a people who cordially detest it.

HENRY JONES FORD.

The Canadian Annual Review of Public Affairs. By J. CASTELL HOPKINS, F.S.S., F.R.G.S. Thirteenth Year of Issue. (Toronto: The Annual Review Publishing Company. Pp. 766. Supplement, pp. 70.)

If evidence were needed of the new place among English-speaking countries that the Dominion of Canada has attained in the last twenty-five years, it can be had by comparing the *Canadian Annual Review* of

1913, edited by Mr. J. Castell Hopkins, with the *Dominion Annual Registers* compiled by the late Henry Morgan from 1879 to 1890. These were serviceable publications of their class and period; and they were compiled with much care and intelligence. But the years covered by Mr. Morgan's work were the days of provinciality and small things in Canada; and not one of the issues for which Mr. Morgan was responsible as editor much exceeded five hundred comparatively small pages. The last issue of the *Canadian Annual Review*—that for 1913—runs to 766 quite large pages; and it would be difficult to name any aspect of the political and economic history of Canada that is not adequately treated in one or other of the twelve sections into which the *Review* is divided. Nine of these sections are concerned with Dominion politics, with politics at the provincial capitals, with developments in the transportation world, and with journalism and literature in Canada during the year. These nine sections constitute by far the larger part of the *Annual*. They are sections that have been of it since the first year of publication, and the disappearance of any one of them would be a distinct loss to students of Canadian politics and economics in this country who have come to depend in large measure on the *Annual Review*.

In addition to these permanent sections there are each year other sections dealing with developments that cannot with adequacy of treatment be brought within the scope of any of these sections. The subjects so treated—and treated at much length in the issue of 1913—are (1) the depression in industry and commerce that marked the year—the depression due to the financial stringency that began in the winter 1912-13, and continued all through 1913; (2) the working of the new banking law that was enacted at Ottawa in the session of 1912; and (3) the controversy at Ottawa and in the constituencies that preceded the rejection by the Senate of the bill of the Borden government for varying quite considerably the naval policy that was adopted by the Laurier government in 1910.

Large and comprehensive as the *Annual Review* now is it needs much care and discretion to record all the developments in a country that was progressing as was Canada until the depression of 1913 to some extent brought things to a halt. Mr. Castell Hopkins can be congratulated on the success attained by the exercise of this care and discretion, and on the equally notable success that he achieves in marshalling the enormous mass of material that goes to the make-up of the *Review*.

EDWARD PORRITT.

Municipal Charters—A Discussion of the Essentials of a City Charter with Models for Adoption. By NATHAN MATTHEWS. (Cambridge: Harvard University Press, 1914. Pp. 210.)

The field of city charter making has been the most neglected in the whole range of municipal science and yet it is and will be increasingly one of the most important of those fields. Any book, therefore, which takes up this important and complex problem is to be welcomed, particularly when written by a man who has had the close connection and extended experience in practical municipal affairs that Mr. Matthews can show. The book consists of two parts, a theoretical presentation of ninety pages and practical charter drafts occupying about a hundred pages. There is very much that is of interest in each of these two parts and particularly the last portion which gives complete charter drafts both for the mayor and council form and for the commission form of city government. Every student of municipal affairs as well as those engaged in a practical way in determining the fundamental laws for cities should have an acquaintance with this book.

To the man, however, who looks for what are generally regarded as advanced ideas in American municipal government, the book will prove a disappointment. Mr. Matthews' views with regard to municipal organization are virtually those set forth in the National Municipal League program of 1899. It is interesting to note, however, that the National Municipal League has deemed it necessary to revise its program in view of newer developments and that the tentative program submitted at the last meeting of the National Municipal League in November, 1914, by the new committee on municipal program, presented very fundamental departures from the recommendations contained in the municipal program fifteen years ago. Mr. Matthews' book, on the other hand, does not admit the desirability of adopting the changes which have come in since commission government began its career in this country fifteen years ago. This fact can perhaps best be illustrated by pointing out that the city manager plan which is now occupying the center of the stage in discussions of municipal affairs and to which the committee of the National Municipal League is committed is not discussed in Mr. Matthews' book at all and is barely mentioned in a footnote of a few lines.

Now it is true that Mr. Matthews in his introduction and throughout his book minimizes the importance of what he calls the political provisions of the city charter as compared with the administrative provi-

sions. But all intelligent discussions of the city manager plan have centered about the proposition that the chief advantage of the city manager plan is in its administrative possibilities. In other words, the city manager plan is considered valuable chiefly in that it does carry out marked improvements in the machinery of administration, and it would seem therefore to merit at least a discussion in a book which attempts to emphasize the importance of the administrative side. However, many of the suggestions which Mr. Matthews makes in his book with regard to the problems of administration can very well be applied to the city manager plan to make it more effective and it is therefore fair to say that the best features of Mr. Matthews' book are entirely applicable as well to the city manager plan which he ignores, as to the ordinary commission form of government of which he does not approve.

H. G. J.

Documents Illustrative of International Law. By T. J. LAWRENCE.
(New York: Heath and Company, 1914. Pp. vi, 351.)

This is not a case book, not yet a source book. It makes no pretense of giving a very large number of the important documents in international law. Indeed, as the title indicates, the primary object of this collection is not to exhaust but to illustrate the field. In the selection of specimens of all classes of writings and written instruments affecting the development of international law, the author is singularly happy. There are included extracts from the writings of the founders of the science, treaties, judgments of prize-courts, arbitral awards, state papers of all kinds, and accepted opinions of modern publicists and private associations.

Although the express purpose of the book is to illustrate, it does far more. It is valuable as a reference book, and will be found particularly useful by everyone who takes an interest in the international questions involved in the present European war. Here, more easily than elsewhere, will be found in their exact wording the Hague conventions, the Declaration of London, and other rules of which exaggerations and misstatements appear almost daily.

In view of its utility for reference, the book might be criticised for omissions, as for example of all documents relating to nationality, or to extraterritoriality, or of the rules of the Treaty of Washington (quoted however in the author's text-book). It might be criticized again for

giving to the arbitral award in the North Atlantic Fisheries dispute a space nearly equal to that devoted to all documents touching neutrality; or for the inclusion of the recent treaty between the United States and Columbia, which in all likelihood will never be ratified. But to criticize thus would be to measure the work against a task which the author never undertook, rather than to give him the credit due for accomplishing his task of illustration so excellently as to achieve at the same time a work of unique value for reference.

ROBERT T. CRANE.

The Great Society. By GRAHAM WALLAS. (New York: The Macmillan Company, 1914. Pp. xii, 383.)

Mr. Wallas' latest book is an essay in social psychology. He makes an analysis of the general social organization of a large modern state, pointing out inadequacies and considering possibilities of improvement. He manifests an extent of vision and an amount of knowledge that make his observations inspiring and suggestive, but the work does not escape from the vagueness and subjectivity that are the ordinary characteristics of works upon social psychology. Mr. Wallas discusses such topics as fear, pleasure, pain, happiness, the psychology of the crowd, the organization of thought, the organization of will in a way that affords intellectual enjoyment, but one does not seem to arrive anywhere. As to this, it should be said, however, that the book does not aim to do more than to state problems that must be solved in organizing the great society, with suggestions as to solutions. Mr. Wallas' views are always worth considering, but at times it must occur to one whether he is not really engaged with English particulars when he purports to be dealing with universals. The political color of the chapter on the "Organization of Thought" is distinctly English and in general the work seems to be a consideration of the situation and prospects of a particular great society—that which has been produced in the course of English history.

HENRY JONES FORD.

Essai sur la légitimité des gouvernements dans ses rapports avec les gouvernements de fait. By RAYMOND GAUDU. (Paris: Librairie Felix Alcan. Pp. xviii, 821.)

The question of determining the legitimacy of de facto governments which come into power in ways not provided for by the constitution of

state is a problem which has come home to us with peculiar force by reason of recent events in a neighboring country. To examine upon what theoretical principles the authority of *de facto* governments has been justified in the past is to go down to the very basis of political theory, to challenge the nature of the state itself. For state and government while separable in concept are inseparable in fact.

After an introductory chapter in which the abstract elements of his subject are set forth the author enters upon a detailed historical presentation of the theories that have been held concerning the legitimacy of *de facto* governments. This is doubtless the more valuable portion of the work to the political scientist. Beginning with the theories of Thomas of Acquin we are led step by step from one school to another down to the latest theories advanced in France and Germany. One cannot but be struck with the persistent recurrence of old doctrines under new forms and with the varying fortunes of abstract principles when applied to the concrete conditions of different centuries. The principle that the legitimacy of governments is based upon the necessity of the social order, i.e., that the existence of a government finds its justification in the fact that it accomplishes the purpose for which governments are consciously or unconsciously established, namely, the welfare of the social body, was very differently conceived in the minds of St. Thomas and of von Jhering. Both arrive at conclusions which when abstractly stated seem not unlike, but the grounds upon which they base their deductions are as far apart as theology and positive law.

As an alternative to this subjective test there is the theory held by Pufendorf, Locke, Vattel, Rousseau and others that the legitimacy of a *de facto* government is based upon the sovereignty of the people, whether as inherent in the ultimate decision of popular approval or disapproval or as expressed in written constitutions. But public opinion is not readily ascertainable at times when *de facto* governments come into power; indeed, except in cases of vacancy, the very circumstances which make it possible for *de facto* governments to be set up make it impracticable to ascertain the popular will. Lastly, there is the theory which attempts to combine the necessity of the social order with the rights of individual liberty and of popular sovereignty. This harmonizing of two divergent theories seems to the author to be the true solution, at least to the extent of reconciling the principle of the necessity of authority with the practical consequences of the sovereignty of the people.

The second part of the treatise is devoted to a study of the various

de facto governments which have been set up in France since 1789. With admirable skill the author develops from the history of the times and from the motives of the persons forming such provisional governments the theoretical principles upon which their conduct was based or pretended to be based. In conclusion M. Gaudu gathers up the threads of the two preceding parts and passes a general criticism upon the theories in their abstract form and as illustrated in history. The whole study is an excellent example of the scientific work in theoretical and practical politics with which recent French writers have enriched the field of political science.

CHARLES G. FENWICK.

Foreigners in Turkey. By PHILIP MARSHALL BROWN. (Princeton University Press, 1914. Pp. iv, 118.)

Of the many favorable impressions created by this book, perhaps two most deserve recording. One is the value of its contribution to our knowledge, and the other is the exceptionally scholarly manner of its presentation.

Use has been made chiefly of Italian and French studies and of the Ottoman collection at Harvard University to supplement an investigation undertaken while the author was in the American diplomatic service at Constantinople. So little of that material is generally accessible to American students that the book fills a hitherto almost unoccupied field.

The book offers something more than an historical account of the capitulations and an analysis of existing extraterritorial rights in Turkey. It presents a thesis as to the proper basis for the solution of the abnormal situation of Turkey in international law. It shows that although the immunities of foreigners are sustained by duress, yet in their origin they arose from a free and spontaneous grant by the conquering Moslems at the very moment of their supreme triumph. The author therefore maintains that these privileges of foreigners should be regarded, not as exceptions to international law, but "as evidence of a more enlightened and a more liberal interpretation of the law of nations than has yet been granted in Europe." While urging the justice to Turkey of modifying the capitulations the author argues a tendency in international law to acceptance of the principles of a limited immunity of aliens from the jurisdiction of the territorial sovereign.

ROBERT T. CRANE.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

BY JOHN A. DORNEY

Library of Congress

UNITED STATES

Appropriations, New Offices, Etc. 63d Cong., 1st and 2d sess., by Jas. C. Courts, clerk to the committee on appropriations, House of Rep., and Kennedy F. Rea, clerk to the committee on appropriations U. S. Senate. 1914. 779 p. 4°. Sen. doc. 621. *U. S. Senate. Committee on Appropriations.*

Contains statements showing: 1. Appropriations made during the 1st and 2d sess. of the 63d Cong. 2. new offices created and the salaries thereof; 3. offices the salaries of which have been omitted, with the amount of reduction; 4. offices the salaries of which have been increased, with the amount of such increase; 5. offices the salaries of which have been reduced, with the amount of such reduction; 6. amount of contracts authorized by appropriations acts in addition to appropriations made therein; 7. references to indefinite appropriations; 8. chronological history of the regular appropriations bills.

Argentine Constitutional Ideas. Address delivered before the American Bar Association at the annual meeting held in Washington, D. C., on Oct. 22, 1914, by Hon. Rómulo S. Naón, Ambassador from Argentina to the U. S. 1914. 19 p. 8°. Senate doc. 618. *U. S. Senate.*

Coal Lands in Alaska, Leasing of. Conference Report (to accompany H. R. 14233). 1914. 16 p. 8°. (H. of R. Report no. 1178.) *Committee of Conference.*

Coal Lands in Alaska, Leasing of. Report. Senate Committee on Public Lands (to accompany H. R. 14233). 1914. 3 p. 8°. (Senate Report no. 790.) *Committee on Public Lands.*

Commercial Law. Report of the Committee on Commercial Law to the American Bar Association at their meeting at Washington, D. C., Oct. 20-22, 1914. 1914. 34 p. 8°. (Senate doc. no. 605.)

Compensation for Accidents to Employees of the U. S., 1908-1913. Report of operations under the Act of May 30, 1908. (Bulletin 155. U. S. Bur. of Labor Statistics). Prepared under the direction of Royal Meeker, commissioner of labor statistics. 1914. 331 p. 8°. House doc. 1135. *House of Representatives.*

Government by Judges. Address delivered at Cooper Union, in New York City on Jan. 27, 1914, by Hon. Walter Clark, chief justice of the supreme court of North Carolina. 1914. 19 p. 8°. Senate doc. 610. *U. S. Senate.*

Government Ownership and Operation of Merchant Vessels in the Foreign Trade of the United States. Committee on the Merchant Marine and Fisheries. Minority views (to accompany H. R. 18666). 1914. 15 p. 8°. (House Rept., 1149, pt. 2.) *House Committee on Merchant Marine and Fisheries.*

Jewish Immigrants. Report of a special committee of the National Jewish Immigration Council appointed to examine into the question of illiteracy among

Jewish immigrants and its causes. 1914. 26 p. 8°. Senate doc. no. 611. *U. S. Senate.*

Judge Emory Speer, Investigation of the Behavior of. Report Committee on the Judiciary (to accompany H. Res. 234). 1914. 226 p. 8°. (House Rept. no. 1176). *House Committee on the Judiciary.*

Judicial Recall. Address delivered at St. Louis, Mo., on September 23, 1914, before the State Bar Association of Missouri by Rome G. Brown, chairman of the American Bar Association Committee to Oppose Judicial Recall. 1914. 21 p. 8°. Senate Doc. no. 617. *U. S. Senate.*

Labor Decisions of Courts and Opinions Affecting, 1913. 1914. 304 p. 8°. Bureau of Labor Statistics. Bulletin, whole no. 152. (Labor Laws of the U. S. Series. no. 4). *U. S. Bureau of Labor Statistics.*

Labor Laws and Factory Inspection in Certain European Countries, Administration of. Bureau of Labor Statistics, Bulletin no. 142. (Foreign labor series no. 1.) 1914. 310 p. 8°. *U. S. Dept. of Labor, Bureau of Labor Statistics.*

Merchant Marine, American. An article prepared by the Southern Commercial Congress on the proposed establishment of a merchant marine. 1914. 6 p. 8°. Sen. doc. 601. *Senate.*

Neutrality and Trade in Contraband. Circular . . . relative to the obligations of the U. S. as a neutral nation to trade in contraband and as to the powers of the executive government over persons who engage in it. 1914. 4 p. 8°. (Senate doc. no. 604.) *Department of State.*

New York, New Haven & Hartford Railroad Co. Evidence taken before the Interstate Commerce Commission relative to the financial transactions . . . together with the report of the Commission thereon. In two volumes. 2413 p. (continuous paging.) Senate doc. no. 543. *U. S. Senate. Committee on Interstate Commerce.*

Note: Vol. 1. Hearings with index. Vol. 2. Exhibits with index.

Parcel Post Statistics. Compiled under the direction of Albert S. Burleson, Postmaster-general. 1914. 52 p. 4°. *U. S. Post Office Department.*

Precedents. Decisions on points of order with phraseology in the United States Senate from the first to sixty-second Congress inclusive, 1789-1913. Compiled by Henry H. Gilfry, chief clerk of the United States Senate. 1914. 711 p. 8°. Sen. doc. no. 1123. *Senate. Chief Clerk.*

Recent Antitrust and Labor Injunction Legislation. Annual address delivered before the American Bar Association at the annual meeting held on Oct. 20, 1914, at Washington, D. C., by Hon. William Howard Taft, President American Bar Association. 1914. 20 p. 8°. Senate doc. 614. *U. S. Senate.*

Statistical Record of the Progress of the United States, 1800-1914, and monetary, commercial, and financial statistics of principal countries (from statistical abstract of the U. S.). 1914. 706 p. 8°. *Dept. of Commerce Bur. of Foreign and Domestic Commerce.*

Summary of State Laws Relating to the Dependent Classes, 1913. 1914. 346 p. 8°. *Dept. of Commerce. Bureau of the Census.*

Taxation and Revenue Systems of State and Local Governments. A digest of constitutional and statutory provisions relating to taxation in the different States in 1912. 1914. 275 p. fol. *Dept. of Commerce, Bureau of the Census.*

Taxation of Corporations. Part V. Mountain and Pacific States. Report of the Commissioner of Corporations on the system of taxing manufacturing, mercantile, transportation, and transmission corporations in the States of Montana, Idaho, Wyoming, Colorado, Utah, Nevada, Arizona, New Mexico, Washington, Oregon, and California. 1914. 236 p. 8°. *Dept. of Commerce, Bur. of Corporations.*

The Constitution of Canada. Address before the American Bar Association at the annual meeting held on Oct. 21, 1914, at Washington, D. C., by Sir Charles Fitzpatrick, chief justice of the Dominion of Canada. 1914. 15 p. 8°. Sen. doc. no. 620. *U. S. Senate.*

War Revenue Bill. Report (to accompany H. R. 18891). 1914. 10 p. 8°. Senate Report no. 813. *Senate. Committee on Finance.*

ARIZONA

Initiative and Referendum Publicity Pamphlet. . . 1914. 116 p. 8°. *Secretary of State.*

Containing measures to be submitted to the electors of Arizona, November 3, 1914.

CALIFORNIA

Amendments to the Constitution and Proposed Statutes with arguments respecting the same, to be submitted to the electors of the State of California at the general election on Tuesday, Nov. 3, 1914. 1914. 112 p. 8°. *Secretary of State.*

California Laws of Interest to Women and Children. . . 1914. 62 p. 16°. *State Library.*

Eight Hour Law, Opinion . . . Relating to. 1914. 50 p. 4°. *Attorney-General.*

CONNECTICUT

Constitution of the State of Connecticut, as amended and in force Jan. 1, 1914. 1914. 27 p. 12°. *Secretary of State.*

Register and Manual, 1914 . . . 1914. 657 p. 8°. *Secretary of State.*

ILLINOIS

Blue Book of the State of Illinois, [1913-14. 1914. 672 p. 8°. *Secretary of State.*

Commission on Half-Century Anniversary of Negro Freedom. *Chicago.* First annual report, 1913-14. 1914. 43 p. 8°. *Ill. Comm. on Half-Century of Negro Freedom.*

T. W. Swann, secretary.

KANSAS

Discussions before the National Journalism Conference. Univ. of Kansas. *News Bulletin.* V. 14, no. 19, 21; V. 15, no. 2. 3 nos. 8°. *Univ. of Kansas.*

Discussions pertain to the following questions: ought newspapers to be dealt with as public utilities? Is not advertising today destroying the thrift of the nation? Why should not the newspaper be compelled by law to guarantee the public against fraudulent advertising? Why do not the newspapers require a state inspection and guaranty of circulation similar to that providing honest weights and measures? Is the defense of the newspaper that it must give the public what it wants, a good one? To what extent is the newspaper responsible for the public's low taste in newspapers?

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MICHIGAN

Helpful Books on the Crisis in Europe. State Library Quarterly Bulletin. V. 5. no. 3. p. 36-41. *State Library.*

OHIO

The Election Laws of the State of Ohio and of the United States of America applicable to the conduct of elections and duties of officers in connection therewith, compiled by Chas. H. Graves. 1914. 315 p. 8°. *Secretary of State.*

OREGON

Proposed Constitutional Amendments and Measures with arguments respecting the same to be submitted to the electors of the State of Oregon at the general election Tuesday, Nov. 3, 1914. 1914. 110 p. 8°. *Secretary of State.*

Statements and Arguments of Political Parties who have nominated candidates, and independent candidates who have filed statements with the secretary of state to be voted for at the regular biennial general election, Nov. 3, 1914. 1914. 40 p. 8°. *Secretary of State.*

PENNSYLVANIA

Smull's Legislative Handbook and Manual of the State of Pennsylvania, 1914. 1914. 1171 p. 8°. *Senate Librarian; Secretary of the Senate.*

UTAH

Utah's Minimum Wage Law for Females. 1914. 16 p. 16°. *Bureau of Immigration, Labor and Statistics.*

Paper read by H. T. Haines before the national convention of the Association of Governmental Labor Officials of the U. S. and Canada, at Nashville, Tenn., on June 9, 1914.

Law in question became effective May 13, 1913.

WASHINGTON

Taxation in Washington. Papers and discussions of the state tax conference at the University of Washington, May 27-29, 1914. 1914. 302 p. 8°. University of Washington. Bulletin, general series no. 84. (Univ. Extension series, no. 12.) *University of Washington.*

Taxation of Land Values; a bibliography. 1914. 20 p. 8°. University Extension series, no. 13 (general series No. 85). *University of Washington.*

ASSOCIATIONS OF STATE OFFICIALS

Publications on Taxation. New York. 1914. 7 p. 8°. *National Tax Association.*

A. E. Holcomb, treasurer, 15 Dey St., New York City. Special circular giving account of publications on taxation issued by the Census Bureau, Library of Congress, Superintendent of Documents, Treasury Dept., Bureau of Corporations, National Tax Association, and recent state reports.

ALSACE LORRAINE

Statistisches Jahrbuch für Elsass-Lothringen . . . 1913-14. Strassburg, 1914. 318 p. 8°. Preis 1 mark. *Statistischen Landesamt.*

BELGIUM

Correspondence diplomatique relative a la guerre de 1914. (24 juillet- 29 Août.) Anvers. 1914. 25 p. fol. *Minst des Affaires Étrangères*.

Note: Original Belgium Gray Paper.

Present War, the Case of Belgium in the. An account of the violation of the neutrality of Belgium and of the laws of war on Belgian territory. Published for the Belgium delegates to the U. S. (Translation of Belgium "Gray Paper") The Macmillan Co. 1914. 120 p. 8°.

CANADA

"Empress of Ireland," Report and Evidence of the Commission of Inquiry into the loss of the . . . through collision with the Norwegian steamship Storstad. Ottawa, 1914. 615 p. 8°. *Minister of Marine and Fisheries*.

European War, Documents Relative to the. Comprising orders in council, cablegrams, correspondence, and speeches delivered in imperial House of Commons, Ottawa, 1914. 167 p. 8°. *House of Commons*.

The Canada Year Book, 1913 . . . Ottawa, 1914. 656 p. 8°. *Minister of Trade and Commerce*.

The German War and its Relation to Canadian Trade, Reprint of articles dealing with. Foreword by Sir George E. Foster, minister of trade and commerce. Ottawa. 1914. 110p. 8°. *Minister of Trade and Commerce*.

Note: Supplement to weekly report of the Dept. of Trade and Commerce.

Treaties and Agreements Affecting Canada in force between His Majesty and the United States of America with subsidiary documents 1814-1913. Ottawa, 1914. 301 p. 8°. *Secretary of State for External Affairs*.

FRANCE

Documents diplomatiques, 1914. La Guerre Européenne. Pièces relatives aux négociations qui ont précédé les déclarations de guerre de L'Allemagne à la Russie, et à la France. Paris, 1914. 216 p. 4°. *Ministère des Affaires étrangères*.

GERMANY

Kriegsausbruch, Vorläufige Denkschrift und Aktenstücke zum. (Original German White Paper.) Berlin, 1914. 37 p. fol. *Auswärtiges Amt*.

Statistisches Jahrbuch für das Deutsche Reich . . . Berlin, 1914. 1914. 472. 138 p. 8°. Ladenpreis 2 Mark. *Kaiserlichen Statistischen Amte*.

The German White-Book (only authorized translation). How Russia and her ruler betrayed Germany's confidence and thereby caused the European war. With the original telegrams and notes. Berlin, 1914. 48 p. 8°. Price 40 Pf. *Foreign Office*.

GREAT BRITAIN

Diplomatic Correspondence Respecting the War published by the Belgian government (translation of Belgian "Gray Paper"). 1914. 76 p. 8°. (ed. 7627). Price 4½d. *Foreign Office*.

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Diplomatic Relations with the Austro-Hungarian Government, Despatch from His Majesty's Ambassador at Vienna respecting the. 1914. 5 p. fol. (ed. 7596.) Price 1d. *Foreign office.*

General Strike in South Africa, Correspondence relating to the recent. (In continuation of ed. 7213.) 1914. 269 p. fol. (ed. 7348.) price 2s. 3d. *Colonial Office.*

House of Commons Procedure, Report from the Select Committee on . . . together with the proceedings . . . minutes of evidence and appendices. 1914. 273 p. fol. H. of C. paper. 378. Price 2s. 3d.

Negotiations Preceding the War Published by the Russian Government, Documents respecting the. 1914. 60 p. 8°. (ed. 7626.) Price 3d. *Foreign Office.*

Note: Russian Orange Book and accompanying translation.

Prevention and Relief of Distress Due to the War, Memorandum on the. 1914. 52 p. fol. (ed. 7603) Price 5½d.

Rupture of Relations with Turkey, Correspondence Respecting Events Leading to the. 1914. 77 p. fol. (ed. 7628.) Price 9d. *Foreign Office.*

REPUBLICA DE HONDURAS

Memoria, . . . Relaciones Exteriores . . . Presentada al Congreso Nacional, 1912-13. Tegucigalpa, 1914. 116 p. 8°. *Secretario de Estado.*

JAPAN

Results of Three Years' Administration of Chosen Since Annexation. Seoul, 1914. 95 p. 4°. *Government-General of Chosen.*

MEXICO

Manifiesto Addressed by General Francisco Villa to the Nation, and documents justifying the disavowal of Venustiano Carranza as first Chief of the revolution. 1914. 77 p. 8°. *Constitutionalist Army Headquarters, Division of the North.*

ONTARIO

Workmen's Compensation Act, The. (4 Geo. V., Chap. 25) . . . 1914. Toronto, 1914. 51 p. 8°. *Legislative Assembly.*

QUEENSLAND

A. B. C. of Queensland Statistics, 1914. Compiled by . . . Government Statistician, 1914. 41 p. 8°. *Home Secretary.*

RUSSIA

Documents Respecting the Negotiations Preceding the War, July 10-Aug. 6, 1914. 1914. 68 p. 4°. *Imperial Ministry of Foreign Affairs.*

English translation of Russian Orange Book. Appendix: speech of Mr. Sazonoff in the duma of the empire, on July 26, 1914.

Negociations ayant précédé la guerre . . . Petrograde, 1914. 49 p. 4°. *Ministère des affaires Étrangères.*

Note: Russian "Orange Paper."

SPAIN

Motivo de los declaraciones de guerra de los Parlamentos de Europa en Agosto de 1914. In Boletín Analítico de los principales documentos parlamentarios extranjeros recibidos en la misma. Mim. 47, 15 Sept. 1914. 177-287 p. 12°. *Secretaría del Congreso de los diputados.*

Contains proceedings of the following parliaments, Germany, Belgium, France, Great Britain and Portugal.

UNION OF SOUTH AFRICA

Native Grievances Inquiry, Report of the, 1913-14. Capetown, 1914. 129 p. fol. Price 5s. *Commission on Native Grievances Inquiry.*

Note: Investigation of the conditions under which natives are engaged for and employed in the mines of the Witwatersrand.

Report of Public Service Commission, Report of the Select Committee on. Capetown, 1914. 518 p. 8°. *Parliament, House of Assembly.*

Note: Select Committee appointed to consider matters referred to in the second annual report of the Public Service Commission, regarding the welfare of the public service and the jurisdiction of the Public Service Commission.

Statistical Year-Book . . . No. 1, 1913. Pretoria, 1914. 333 p. 8°. Price 7s. 6d. *Minister of the Interior.*

INDEX TO RECENT LITERATURE BOOKS AND PERIODICALS

COLONIES

Books

Annual report on reforms and progress in Chosen, Korea. Government-General of Chosen.

Benhabîls, Chérif. L'Algérie française vue par un indigène. Alger: imp. Fontana. 1914. Pp. iv, 205.

Braun, E. The new Tripoli. London: T. Fisher Unwin.

Brusl, G. Bibliographie de l'Afrique équatoriale française. Paris: E. Larose. 1914. Pp. iv, 330.

Dausat, A. L'expansion italienne. Paris: Fasquelle. 1914. Pp. 298.

Duboscq, A. Syrie, Tripolitaine, Albanie. Paris: Alcan. 1914. Pp. ii, 226.

El Barkouky. Le rapport entre le pouvoir exécutif et le pouvoir judiciaire en Egypte. Paris: Dalloz. 1914. Pp. ii, 171.

Lébre, G. De l'établissement du protectorat de la France au Maroc et spécialement du régime foncier. Paris: Pedone. 1914. Pp. 217.

Noury, S. Le régime représentatif en Turquie. Paris: Giard. 1914. Pp. 131.

Rondel-Saint. En France africaine. Paris: Plon. 1914. Pp. iii, 352.

Rouard, de Card, E. Traités et accords concernant le protectorat de la France au Maroc. Paris: Pedoneet Gamber. 1914. Pp. viii, 123.

Roumens, comm. L'impérialisme français et les chemins de fer transafricains. Paris: Plon. 1914. Pp. iv, 372.

Tridon, H. Comment la France perdra ses colonies. Paris: 40, r. de Seine. 1913. Pp. 152.

Worsfold, W. B. The future of Egypt. London: Collins, Sons and Co. Pp. 263.

Articles in Periodicals

German Colonies. The German colonies. *H. H. Johnston.* Edinburgh Review. October, 1914.

India. England, Russia, and India. *John Pollen.* Asiatic Review. October 1, 1914.

India. The mighty voice of India. *Roper Lethbridge.* Asiatic Review. October 1, 1914.

Morocco. The development of Morocco. *Percival Dodge.* Journal of Race Development. October, 1914.

Portuguese Colonies. La question des colonies portugaises. *Angel Marvaud.* Revue Pol. Int. November-December, 1914.

Trophies. The adaptability of the white man to tropical America. *Ellsworth Huntington.* Journal of Race Development. October, 1914.

CONSTITUTIONAL LAW

Books

- Arlot, L.* De la responsabilité de l'Etat législateur. Sarlat: imp. Michelet. 1914. Pp. 181.
- Birot, G.* Le home-rule irlandais. Paris: Giard. 1914. Pp. 184.
- Boyer, J.* Séparation des Eglises et de L'Etat. Chateauroux: imp. Badel. 1914. Pp. 208.
- Brown, P. H.* The legislative union of England and Scotland. New York: Oxford University Press.
- Brulle, R.* De la responsabilité de l'Etat à raison des actes législatifs. Bordeaux: imp. Cadoret. 1914. Pp. 108.
- Bülou, prince de.* La politique allemande. Paris: Lavauzelle. 1914. Pp. 327.
- Cavan, J.* La théorie du recours parallèle devant de Conseil d'Etat. Paris: Rousseau. 1914. Pp. 155.
- Celentano, F.* Studio critico della nuova legge elettorale politica. Roma Athenaeum (tip. Bodoni, di C. Bolognesi). Pp. 96.
- Corwin, E. S.* The doctrine of judicial review. Princeton: University Press. Cyclopaedia of American government. Vols. II and III. New York: Appleton.
- Dareste, P.* Les voies de recours contre les actes de la puissance publique. Paris: Challamel. 1914. Pp. 708.
- Demorguy, G.* Essai sur l'administration de la Perse. Paris: Leroux. 1913. Pp. xxii, 216.
- Fischbach, O.* Das öffentliche Recht des Reichslandes Elsass-Lothringen. Tübingen: J. C. B. Mohr. Pp. xiv, 448.
- Fischer, O.* Das Verfassungs- u. Verwaltungsrecht des Deutschen Reiches u. des Königr. Sachsen, in seinen Grundzügen gemeinfasslich dargestellt. 14. Aufl. Leipzig: Rossberg'sche Verlagsbuchh. Pp. viii, 253.
- Flandin, P. E.* La question de la représentation proportionnelle en Angleterre et dans les colonies anglaises. Le vote transférable. Paris: Dalloz. 1914. Pp. ii, 155.
- Funk-Brentano, F.* Le Roi. Paris: Hachette. 1913. Pp. 414.
- Fustel de Coulanges.* Histoire des institutions politiques de l'ancienne France. La Gaule romaine. Revue et complétée par C. Jullian. 4^e ed. Paris: Hachette. 1914. Pp. xiv, 333.
- Goldstein, H.* Grundzüge des Staats- u. Verwaltungsrechts der südafrikanischen Union. Marburg: W. Schücking. Pp. viii, 59.
- Hannay, D.* Naval courts-martial. New York: Putnam.
- Howe, Daniel W.* Political history of secession. New York: Putnam.
- Hugues, P. d'.* La guerre des fonctionnaires. Paris: Flammarion. 1913. Pp. xi, 305.
- Lobstein, R.* Les origines du droit dynastique allemand. Lyon: Georg. 1914. Pp. xiii, 90.
- Lods, A.* La nouvelle législation des cultes protestants en France, 1905-1913. Paris: Fischbacher. 1914. Pp. xvii, 376.
- Lowell, A. L.* The governments of France, Italy, and Germany. Cambridge: Harvard University Press.

- Mannhardt, J. W.* Die polizeilichen Aufgaben des Seemannsamtes. Hamburg: L. Gräfe & Sillem. Pp. viii, 83.
- Marinoni, M.* La responsabilità degli stati per gli atti dei loro rappresentanti, secondo il diritto internazionale. Roma: Athenaeum. Pp. 169.
- Mathews, N.* Municipal charters. Cambridge: Harvard University Press.
- Maybon, A.* La république chinoise. Paris: A. Colin. Pp. xix, 268.
- Pierre, E.* Traité de droit politique, électoral et parlementaire. 3^e éd., entièrement refondue. Paris: Saint-Benoît. 1914. Pp. xxxix, 1431.
- Samuel, R., et G. Bonet-Maury.* Les parlementaires français. T. 2: 1900-1914. Paris: Roustan. 1914. Pp. viii, 481.
- Schmid, F.* Bosnien u. die Herzegovina unter der Verwaltung. Österreich-Ungarns. Leipzig: Veit & Co. Pp. viii, 832.
- Smith, A. L.* Church and state in the middle ages. New York: Oxford University. Pp. 8, 245.
- Tsien-tai.* Le pouvoir législatif en Chine. Paris: Pedone. 1914. Pp. 204.
- Williams, J. F.* Proportional representation and British politics. New York: Duffield.

Articles in Periodicals

- Administration.** L'influence de l'ordre hiérarchique sur la responsabilité des agents. *J. Barthélemy.* Rev. d. Droit Pub. Juillet à Décembre, 1914.
- Aliens.** The protection of aliens by the United States. *Simeon E. Baldwin.* Michigan Law Review. November, 1914.
- Anti-trust Act.** The new interpretation of the Sherman act. *Clarence E. Eldridge.* Michigan Law Review. November and December, 1914.
- Anti-Trust Act.** The Sherman act and the Harvester case. *Thomas A. Thacher.* California Law Review. January, 1915.
- China.** L'évolution de la république chinoise. *Albert Maybon.* Review. Pol. Int. Novembre-Décembre, 1914.
- China.** The future of China. *J. O. P. Bland.* Edinburgh Review. October, 1914.
- China.** The parliament of the republic of China. *F. J. Goodnow.* American Political Science Review. November, 1914.
- Church and State.** Church and State. *G. C. Phillimore.* Law Magazine and Review. November, 1914.
- Crown.** The crown, the public, and the individual. *W. W. Lucas.* Juridicial Review. September, 1914.
- Due Process.** The constitutionality of statutes forbidding advertising signs on property. *Henry T. Terry.* Yale Law Journal. November, 1914.
- Employer's Liability.** Federal employers' liability act. *Edward P. Buford.* Harvard Law Review. December, 1914.
- England.** A written constitution for Britain. *J. O. Taylor.* Juridicial Review. December, 1914.
- Interstate Commerce.** Another word about the evolution of the federal regulation of intrastate rates and the Shreveport rate cases. *John S. Sheppard, Jr.* Harvard Law Review. January, 1915.
- Interstate Commerce.** Applicability of the United States commerce act to interstate telegraph companies. *Wm. Overton Harris.* Virginia Law Review. November, 1914.

Interstate Commerce. The evolution of federal regulation of intrastate rates: the Shreveport rate cases. *William C. Coleman*. Harvard Law Review. November, 1914.

Intrastate Commerce. Federal control of intrastate railroad rates. *Henry Wolf Bickl*. Pennsylvania Law Review. December, 1914.

Ireland. The home rule situation. Political Quarterly. May, 1914.

Jury. Has a trial judge of a U. S. court the right to direct a verdict? *Frank Warren Hackett*. Yale Law Journal. December, 1914.

Military Law. Unconstitutional claims of military authority. *Henry Winthrop Ballantine*. Yale Law Journal. January, 1915.

National Banks. State taxation of national banks. *George Bryan*. Yale Law Journal. December, 1914.

State Waters. The question of federal disposition of state waters in the priority states. *L. Ward Bannister*. Harvard Law Review. January, 1915.

Trade Commission. The federal trade commission. *John B. Daish*. Yale Law Journal. November, 1914.

Trade Commission. The trade commission and the courts. *William D. Kerr*. Illinois Law Review. December, 1914.

Water Power. The water-power problem in the United States. *Rome G. Brown*. Yale Law Journal. November, 1914.

Webb-Kenyon Act. State legislation under the Webb-Kenyon act. *Lindsay Rogers*. Harvard Law Review. January, 1915.

INTERNATIONAL LAW AND DIPLOMACY

Books

Baldwin, E. F. The world war. New York: Macmillan.

Barth, J. L'évolution de la question d'Orient. Paris: Alph. Picard. 1914. Pp. 191, 204.

Beck, James. The evidence in the case. New York: Putnam.

Bernhardi, F. von. Britain as Germany's vassal. New York: Doran.

Bernhardi, Frederick von. How Germany makes war. New York: Doran.

Bernhardi, F. von. On war of today. 2 vols. New York: Dodd, Mead.

Blatchford, R. Germany and England. New York: E. J. Clode.

Bourbon, Sixte de. Le traité d'Utrecht et les lois fondamentales du royaume. Paris: E. Champion. 1914. Pp. vii, 346.

Bourdon, G. The German enigma. New York: Dutton.

Burgsdorff, A. v. Die Kriegserklärung u. ihre Wirkungen unter besond. Berücks. der öffentlich-rechtlichen u. privatrechtlichen Verträge. Düsseldorf: Schmidt & Olbertz. Pp. 77.

Butler, N. M. L'esprit international. Considérations sur le règlement juridique des différents internationaux. Paris: Crès. 1914. Pp. xxvi, 199.

Catellani, E. Le Droit aérien. Traduti de l'italien; par M. Bouteloup. Paris: A. Rousseau. Pp. viii, 196.

Chapman, J. J. Deutschland über Alles. New York: Putnam.

Colin, J. France and the next war. New York: Doran.

Cook, Edward. Why Britain is at war. London: Macmillan.

Costes, M. Des cessions de territoires envisagées dans leur principe et dans leurs effets relatifs au changement de souveraineté et de nationalité. Paris: Rivière. 1914. Pp. 236.

Cramb, J. A. Germany and England. New York: Dutton.

Dickinson, Asa Don. The Kaiser. New York: Doubleday, Page.

Djuvara, T. G. Cent projets de portage de la Turquie (1281-1913). Paris: Alcan. 1914. Pp. x, 654.

Dorras, A. de Lapradelle. Répertoire de droit international privé et de droit pénal international. Paris: Tenin. 1914. Pp. iii, 1115.

Doyle, A. C. Great Britain and the next war. Boston: Small, Maynard & Co.

Franklin, F. M. The great crime of 1914. New York: Putnam.

French army from within. *Anonymous.* New York: Doran.

Frobenius, H. The German Empire's hour of destiny. New York: McBride, Nast.

Fullerton, W. M. Problems of power. New and revised edition. New York: Scribner.

German army from within. *Anonymous.* New York: Doran.

Gibbons, H. A. The new map of Europe. New York: Century.

Grosse, J. Les mines sous-marines. Paris: Pichon. 1914. Pp. 191.

Guedalia, P. The partition of Europe. New York: Oxford University Press.

Hanotaux, G. La guerre des Balkans et l'Europe. Paris: Plon. 1914. Pp. vi, 463.

Hart, A. B. The war in Europe. New York: Appleton.

Hasse, A. R. Index to U. S. documents relating to foreign affairs. Part I, Washington: Carnegie Institute.

Henderson, E. F. Germany's fighting machine. Indianapolis: Bobbs-Merrill.

Holla, F. W. The peace conference at the Hague. New York: Macmillan.

Hooghe, E. d'. Droit aérien. Paris: P. Dupont. 1914. Pp. 121.

Jefferson, C. E. The cause of the war. New York: Crowell.

Johnson, R. The war in Europe. New York: Sully and Kleinteich.

Jordan, D. S., and H. E. War's aftermath. Boston: Houghton, Mifflin.

Julliot, Ch. L. Sur la responsabilité des officiers instrumentaires et de l'état civil aux armées. Paris: Tenin. 1913. Pp. 26.

Kennedy, S. The pan-angles. New York: Longmans, Green.

Kilpatrick, J. A. Tommy Atkins at war. New York: McBride, Nast.

Lanoir, Paul. The German spy system in France. London: H. Southeran and Company.

Leblond, M. A. La France devant l'Europe. Paris: Fasquelle. 1913. Pp. xii, 344.

Lecomte, M., et lieutenant-colonel C. Lévi. Neutralité belge et invasion allemande. Histoire, stratégie. Paris: Lavauzelle. Bruxelles: Lebègue. 1914. Pp. v, 608.

Le Nepveu de Carfort. La guerre légitime. Essai sur les bases et la nature du devoir militaire. Nancy et Paris: Berger-Lebrault. 1914. Pp. x, 130.

Maniegaza, V. Questioni di politica estera. Anno viii (1913): la guerra balcanica. Milano: fratelli Treves. Pp. 368.

- Martin, E. S.* The war week by week. New York: Dutton.
- Mérignhac, A.* Le service hospitalier international dans les guerres terrestres. Paris: Fournier. 1914. Pp. 48.
- Ménil, A.* La paix est malade. Paris: Plon. 1914. Pp. xi, 267.
- Muir, Ramsey.* Britain's case against Germany. New York: Longmans, Green.
- Okie, H. P.* Causes and consequences of the war of 1914. Washington: Washington Publishing Company.
- Origines (les) diplomatiques de la guerre de 1870-1871. Paris: Ficker. 1914. Pp. 491.
- Palat, Pierre Lehaucourt.* L'alliance franco-allemande ou la guerre. Réponse à M. Sembat. Paris-Nancy: Imhans et Chapelot. 1914. Pp. 222.
- Pélissier, J.* Dix mois de guerre dans les Balkans, octobre, 1912—août 1913. Paris: Perrin. 1914. Pp. x, 382.
- Pillet, A.* Des personnes morales en droit international privé. Paris: Tenin. 1914. Pp. xviii, 434.
- Pioget, R. G.* Des règles de droit international applicables à l'aviation. Paris: Rousseau. Pp. 142.
- Pitisteano, A. G.* La question du Danube. Paris: E. Douchemin. 1914. Pp. 107.
- Polynios, P. J.* L'Albanie et la réunion d'ambassadeurs à Londres. Paris: Rousseau. 1914. Pp. 161.
- Powell, E. A.* Fighting in Flanders. New York: Scribner.
- Powys, J. C.* The war and culture. G. A. Shaw.
- Price, M. P.* The diplomatic history of the war. New York: Scribner.
- Rankin, R.* The inner history of the Balkan war. London: Constable and Company. Pp. 582.
- Real Kaiser. *Anonymous.* New York: Dodd, Mead.
- Rohland, W. v.* Grundriss des Völkerrechts. Freiburg: C. Troemer. Pp. 40.
- Roubier, P.* Influence du changement des circonstances sur les contrats de droit public. Paris: Rousseau. 1914. Pp. viii, 168.
- Sauveur, A.* Germany and the European war. Boston: Fort Hill Press.
- Schreiner, Olive.* Woman and war. New York: Stokes.
- Schurman, J. G.* The Balkan wars. Second edition. Princeton: University Press.
- Sheip, Stanley S.* Handbook of the European war. White Plains, N. Y.: H. W. Wilson Company.
- Simonds, F. H.* The great war. New York: Mitchell Kennerley.
- Sladen, Douglas.* The real truth about Germany: from the English point of view. New York: Putnam.
- Sloane, William M.* The treaty of Ghent. New York: New York Historical Society.
- Stockton, C. H.* Outlines of international law. New York: Scribner.
- Times history of the war: the battlefield of Europe. Woodward and Van Slyke.
- Tittoni, Tommaso.* Italy's foreign and colonial policy. London: Smith, Elder and Company.
- Vellay, Ch.* L'Irrédentisme hellénique. 2^e édition. Paris: Perrin. 1913. Pp. viii, 329.

Vie (la) militaire en France et à l'étranger (2^e année). Paris: Alcan. 1914. Pp. 368.

Vivian, E. C. The British army from within. New York: Doran.

Von Mach, Edmund. What Germany wants. Boston: Little, Brown.

Whitridge, F. W. One American's opinion of the European war. New York: Dutton.

Articles in Periodicals

Aliens. The international responsibility of states for injuries sustained by aliens on account of mob violence, insurrections and civil wars. *Julius Goebel, Jr.* American Journal of International Law. October, 1914.

Annexation. L'annexion en droit international et la constitution Hellénique. *Const. N. Goulimis.* Rev. d. Droit. Pub. Juillet à Décembre, 1914.

Arbitral Courts. The origin of the Hague arbitral courts. *Denys P. Myers.* American Journal of International Law. October, 1914.

Arbitration. The advance made by treaties of arbitration. *James L. Tryon.* Yale Law Journal. November, 1914.

Arbitration. Restrictive clauses in international arbitration treaties. *Amara Cavalcanti.* American Journal of International Law. October, 1914.

Armed Merchant Ships. Armed merchant ships. *A. Pearce Higgins.* American Journal of International Law. October, 1914.

Armed Merchantmen. The arming of merchantmen. *C. A. McCurdy.* Law Magazine and Review. November, 1914.

Austria-Hungary. The ultimate disappearance of Austria-Hungary. *J. Ellis Barker.* Nineteenth Century. November, 1914.

Balkans. The Balkan question—the key to a permanent peace. *Arthur W. Spencer.* American Political Science Review. November, 1914.

Belgium. The neutrality of Belgium. *A. G. De Lapradelle.* North American Review. December, 1914.

Belgium. The neutralization of Belgium and the doctrine of *Kriegsraison*. *Jesse S. Reeves.* Michigan Law Review. January, 1915.

Bosnia. La question Bosniaque. *Sigismond Gargas.* Rev. d. Droit. Pub. Juillet à Décembre, 1914.

Disarmament. International disarmament. *Arturo Labriola.* Forum. January, 1915.

East. The hegemony of the far east. *John C. Ferguson.* North American Review. November, 1914.

Germany. The German constitutional movement and the war. *W. H. Dawson.* Contemporary Review. December, 1914.

Germany. The German point of view. *James Harvey Robinson.* Century Magazine. January, 1915.

Germany. Germany and the powers. *Bernard Dernburg.* North American Review. December, 1914.

Hague Conference. Die dritte Haager Friedenskonferenz. *Hans Wehberg.* Zeits. f. Völkerr. VIII, 3. 1914.

Holland. Diplomacy at the Hague. *William J. Collins.* Contemporary Review. November, 1914.

Holland. Holland and the Scheldt. *Th. Baty.* Law Magazine and Review. November, 1914.

Italy. Italy and the war. *Thomas Okey*. *Contemporary Review*. October, 1914.

Japan. The Japanese question. *J. Mahon*. *American Law Review*. September-October, 1914.

Japan. Our relations with Japan. *John Holladay Latané*. *American Political Science Review*. November, 1914.

Laws of War. Aus dem Kriegsrecht der Deutschen Befreiungskriege 1813-1815. *Kurt Schönlanke*. *Zeits. f. Völkerr.* VIII, 3. 1914.

Morocco. The diplomatic relations of Morocco. *Talcott Williams*. *Journal of Race Development*. October, 1914.

Naturalization. The need of a naturalization treaty with Italy. *John Valente*. *Forum*. December, 1914.

Neutrality. The difficulties of American neutrality. *James Davenport Whelpley*. *Fortnightly Review*. November, 1914.

Neutrality. Neutrality. *George B. Davis*. *Yale Law Journal*. December, 1914.

Neutrality Treaties. The permanent neutrality treaties. *Yale Law Journal*. January, 1915.

Panama. The work of the joint international commission on Panama claims. *Leo S. Rowe*. *American Journal of International Law*. October, 1914.

Prize. The law of prize. *Jurist*. *Law Magazine and Review*. November, 1911.

Protectorates. Völkerrechtliches und koloniales Protoktorat. *Paul Heilborn*. *Zeits. f. Völkerr.* VIII, 3. 1914.

Safety at Sea. International conference on safety of life at sea. *Everett P. Wheeler*. *American Journal of International Law*. October, 1914.

Switzerland. Switzerland and the war. *Charles Borgeand*. *North American Review*. December, 1914.

Turkey. The downfall of Turkey. *E. J. Dillon*. *Contemporary Review*. December, 1914.

Turkey. Réflexions sur le rôle de la Turquie. *Un Ancien Grand-Vezir*. *Revue pol. int.* November-Décembre, 1914.

Turkey. Turkey and England. *Marmaduke Pickthall*. *Asiatic Review*. October 1, 1914.

Turkey. Turkey and the war. *Edwin Pears*. *Contemporary Review*. November, 1914.

War. America and the European war. *Norman Angell*. *Yale Review*. January, 1915.

War. The attitude of Italy. *Arthur E. P. Weigall*. *Fortnightly Review*. October, 1914.

War. The Austro-Servian dispute. *Round Table*. September, 1914.

War. The courting of America. *James Davenport Whelpley*. *Fortnightly Review*. October, 1914.

War. General Bernhardt on the moral logic of war. *W. H. Mallock*. *Nineteenth Century*. December, 1914.

War. The great war, and after. *The Editor*. *Asiatic Review*. October 1, 1914.

War. La guerre et le droit des gens au XX^e siècle. *Louis Renault*. *Revue pol. int.* November-Décembre, 1914.

- War. International law in war. *Th. Niemeyer*. Michigan Law Review. January, 1915.
- War. The new Europe. *Sydney Brooks*. North American Review. November, 1914.
- War. The origins of the present war. *Valentine Chirol*. Quarterly Review. October, 1914.
- War. Russia and the war. *Politicus*. Fortnightly Review. October, 1914.
- War. The war in Europe. Round Table. September, 1914.
- War. War and financial exhaustion. Round Table. December, 1914.
- War. The war and the law. *Harold Spender*. Contemporary Review. October, 1914.
- War. The war of the nations. *Carlton Hayes*. Political Science Quarterly. December, 1914.
- War. War problems. *Th. Baty*. Juridicial Review. September, 1914.

JURISPRUDENCE

Books

- Bühler, C.* Die subjektiven öffentlichen Rechte u. ihr Schutz in der deutschen Verwaltungsrechtsprechung. Stuttgart: W. Kohlhammer. Pp. x, 532.
- Dall, Caroline.* The college, the market, and the court. Concord, N. H.: Rumford Press.
- Davis, H. A.* The judicial veto. Boston: Houghton, Mifflin.
- Eliot, T. D.* The juvenile court and the community. New York: Macmillan.
- Guilmard, R.* De la notion de juridiction gracieuse en droit français. Caen: imp. Valin. 1913. Pp. xi, 533.
- Haney, L. H.* Business organization and combination. New York: Macmillan.
- Kohler, J.* Recht u. Persönlichkeit in der Kultur der Gegenwart. Stuttgart: Deutsche Verlags-Anstalt. Pp. ix, 278.
- La Grasserie, R. de.* De la justice en France et à l'étranger au XX^e siècle. Paris: Tenin. 1914. Pp. 1124.
- Miele, V.* Principi di filosofia del diritto. Milano: Società editrice libraria. Pp. 891.
- Sturm, A.* Die Reaktion des Rechts. (Zwangsvollstreckung—Strafe—Selbsthilfe—Duell—Krieg.) Eine rechtspsycholog. Abhandlg. Hannover: Helwing. Pp. v, 103.

Articles in Periodicals

- Arbitration. Recht und richterliche Streiterledigung. *Theodore Marburg*. Zeits. f. Völkerr. VIII, 3. 1914.
- Business Jurisprudence. Business jurisprudence. *Edward A. Adler*. Harvard Law Review. December, 1914.
- Civil Procedure. Studies in English civil procedure. 2. The rule-making authority. *Samuel Rosenbaum*. Pennsylvania Law Review. January, 1915.
- Commercial Law. The rules of venue, and the beginnings of the commercial jurisdiction of the common law courts. *W. S. Holdsworth*. Colorado Law Review. November, 1914.

Common Law. Anomalous growth of the common law—the Anglo-American quest for justice. *Hugh Evander Willis*. *California Law Review*. January, 1915.

County Court. A model county court. *Herbert Harley*. *California Law Review*. November, 1914.

Equity. The powers of courts of equity—I. *Waller Wheeler Cook*. *Colorado Law Review*. January, 1915.

Inns of Court. Self-government in the inns of court. *Hugh H. L. Bellot*. *Law Magazine and Review*. November, 1914.

Law of the Land. The law of the land. *Oliver H. Dean*. *American Law Review*. September-October, 1914.

Legal Delay. The law's delays. *Grant Foreman*. *Michigan Law Review*. December, 1914.

Legal Education. An existing defect in the American system of legal education. *Hampton L. Carson*. *American Law Review*. November-December, 1914.

Legal Education. The modern law school in England and America. *Charles M. Hepburn*. *Virginia Law Review*. November, 1914.

Legal Myths. Some myths of the law. *Walter Clark*. *Michigan Law Review*. November, 1914.

Legal Philosophy. Die Bedeutung der Scholastik für die Rechtsphilosophie der Gegenwart mit besonderer Beziehung auf Thomas von Aquin. *Bernhard Brands*. *Archiv f. Rechts- u. Wirtschaftsphil.* Oktober 1914.

Legal Philosophy. Die Grenzen der Rechtsphilosophie. *Josef Kohler*. *Archiv f. Rechts- u. Wirtschaftsphil.* Oktober, 1914.

Legal Philosophy. Logic, jurisprudence and the law. *George H. Smith*. *American Law Review*. November-December, 1914.

Legal State. Rechtsstaat und Wohlfahrtsstaat. *Ferdinand Toennies*. *Archiv f. Rechts- u. Wirtschaftsphil.* Oktober, 1914.

Legal Terminology. The terminology of legal science (with a plea for the science of nomo-thetics). *John H. Wigmore*. *Harvard Law Review*. November, 1914.

Mohammedan Law. The sources of Mohammedan law. *W. Wyatt Paine*. *American Law Review*. November-December, 1914.

Probation. The new probation law of Michigan. *Charles B. Collingwood*. *Michigan Law Review*. November, 1914.

Punishment. The conditions of state punishment. *E. Bowen*. *Quarterly Review*. October, 1914.

Rule of Law. The rule of law. *E. Barker*. *Political Quarterly*. May, 1914.

Science of Law. The need for a science of law. *Edward Lindsey*. *American Law Review*. September-October, 1914.

Trade Unions. The present law of trade disputes and trade unions. *W. M. Geldart*. *Political Quarterly*. May, 1914.

MISCELLANEOUS

Books

- Aventino*. La doctrine de Léon XIII contre le libéralisme et la démocratie. Paris: Nouv. libr. Nationale. 1914. Pp. 285.
- Beauwan-Craon*. La survivance française au Canada. Paris: Emile-Paul. 1914. Pp. xxviii, 235.
- Bender, M.* War revenue law. Albany: Matthew Bender and Company.
- Blakeslee, G. H.* Latin America. New York: G. E. Stechert and Company.
- Brown, H. G.* International trade and exchange. New York: Macmillan.
- Christian, P.* Du droit de vote des femmes. Poitiers: imp. G. Roy. 1913. Pp. 38.
- Croly, H.* Progressive democracy. New York: Macmillan.
- Crothers, S. McC.* Meditations on votes for women. Boston: Houghton, Mifflin.
- Descamps, P.* La formation sociale de l'anglais moderne. Paris: A. Colin. 1914. Pp. 384.
- Dimnet, E.* France herself again. New York: Putnam.
- Dunning, W. A.* The British Empire and the United States. New York: Scribner.
- Ely, R. T.* Property and contract. Vols. I and II. New York: Macmillan.
- Esher, Viscount.* The training of a sovereign. New York: Longmans, Green.
- Gauss, C.* Selections from the works of Jean-Jacques Rousseau. Princeton: University Press.
- Hale, B. F. R.* What women want. New York: Stokes.
- Hausraih, A.* Treitschke: his doctrine of German destiny and of international relations. New York: Putnam.
- Henry, H. M.* The police control of the slave in South Carolina. Privately printed.
- Hollister, Horace A.* The administration of education in a democracy. New York: Scribner.
- Jay, Julius.* Open-air politics. Boston: Houghton, Mifflin.
- Liman, P.* Der Kronprinz. Gedanken üb. Deutschlands Zukunft. Minden: W. Köhler. Pp. 299.
- Mabie, Hamilton W.* Japan today and tomorrow. New York: Macmillan.
- McCabe, J.* Treitschke and the great war. New York: Stokes.
- Michels, R.* Les partis politiques. Essai sur les tendances oligarchiques des démocraties. Paris: Flammarion. 1914. Pp. 319.
- Neely, T. B.* Parliamentary practice. New York: Abingdon Press.
- Oster, J. E.* The political and economic doctrines of John Marshall. Washington: Neale Publishing Company.
- Roberts, E.* Monarchical socialism in Germany. New York: Scribner.
- Rohrbach, P.* Der deutsche Gedanke in der Welt. Königstein im Taunus: K. R. Langewiesche. Pp. 240.
- Sangnier, M.* Le programme de la République démocratique. Paris: "la Démocratie." Pp. 68.
- Schmitz, O. A. H.* Die Kunst der Politik. 2. Aufl. München: G. Müller. Pp. 470.

- Sortais, G.* Les catholiques en face de la démocratie et du droit commun. Paris: J. de Gigord. 1914. Pp. viii, 309.
- Starczewski, E.* Die polnische Frage u. Europa. Aus dem Poln. übers. v. J. Flach. Berlin: S. Knaster. Pp. vi, 335.
- Strunsky, Rose.* Abraham Lincoln. New York: Macmillan.
- Tamister.* L'idée révolutionnaire et les utopies modernes. Paris: Lethielloux. 1914. Pp. vii, 365.
- Thrillet, L.* Les doctrines politiques de Léon XIII. Bordeaux: imp. Cadoret. 1914. Pp. 160.
- Topham, Anne.* Memories of the Kaiser's court. New York: Dodd, Mead.
- Tower, C.* Essays: political and historical. Philadelphia: Lippincott.
- Treitschke, H. von.* Selections from Treitschke's lectures on politics. New York: Stokes.
- Urès, duchesse d'.* Le suffrage féminin au point de vue historique. Meulan: imp. F. Roger. 1914. Pp. 19.

Articles in Periodicals

- Commerce.** The new freedom in commerce. *H. R. Mussey.* Political Science Quarterly. December, 1914.
- Hegel's Political Theories.** Der Charakter der Hegel'schen Rechtsphilosophie. *Theobald Ziegler.* Archiv f. Rechts- u. Wirtschaftsphil. October, 1914.
- Mexico.** Our duty toward Mexico and Central America. *Theodore Paschke.* Journal of Race Development. October, 1914.
- Minority Rule.** Minority rule. *E. E. Robinson.* Sewanee Review. October, 1914.
- Nationality.** Nationality and the union. *Samuel Franklin Gammon.* Forum. December, 1914.
- Natural Law.** Natural law and the state. *H. Merian Allen.* Sewanee Review. October, 1914.
- Pan-Slavism.** Pan-Slavism and European politics. *Louis Levine.* Political Science Quarterly. December, 1914.
- Political Ideals.** The doctrine of ascendancy. Round Table. December, 1914.
- Political Ideals.** Nationalism and liberty. Round Table. December, 1914.
- Political Ideals.** Russia and her ideals. Round Table. December, 1914.
- Prussian Autocracy.** The blight of Prussian autocracy. *Sidney Whitman.* Fortnightly Review. December, 1914.
- Prussian Political Ideals.** Germany and the Prussian spirit. Round Table. September, 1914.
- Prussianism.** Germanism and Prussianism. *Sidney Low.* Edinburgh Review. October, 1914.
- Public Policy.** The public policy of the state of Pennsylvania. *Graham C. Woodward.* Pennsylvania Law Review. December, 1914.
- Public Service Commission.** The paternalism of public service commissions. *C. S. Duncan.* Forum. January, 1915.
- Public Utilities.** The work of the Illinois public utilities commission. *William D. Kerr.* Illinois Law Review. November, 1914.

Race Prejudice. Moral and racial prejudice. *Wilson D. Wallis*. *Journal of Race Development*. October, 1914.

Ranke's Political Theories. Ranke's Anschauungen über den Zusammenhang zwischen der auswärtigen und der inneren Politik der Staaten. *Max v. Szecepanski*. *Zeits. f. Pol.* VII, 4. 1914.

Recall. An argument against the judicial recall. *Harvey S. Hoshour*. *Green Bag*. December, 1914.

Russia. The Russian problem. *P. Vinogradoff*. *Yale Review*. January, 1915.

Social Control. Institutions as instruments of social control. *R. M. MacIver*. *Political Quarterly*. May, 1914.

State Administration. Reorganization of state administration in California. *David P. Barrows*. *California Law Review*. January, 1915.

Treitschke. The political teachings of Treitschke. *Arthur T. Hadley*. *Yale Review*. January, 1915.

Treitschke. Treitschke. *G. H. Morgan*. *Nineteenth Century*. October, 1914.

Women's Suffrage. Do women vote? *Ellis Meredith*. *National Municipal Review*. October, 1914.

MUNICIPAL GOVERNMENT

Books

Bowen, L. deK. Safeguards for city youth at work and at play. New York: Macmillan.

Ch'u, Yin. The finances of the city of New York. New York: Columbia University.

Dawson, W. H. Municipal life and government in Germany. New York: Longmans, Green.

Shurtleff, F. Carrying out the city plan. New York: Survey Associates.

Articles in Periodicals

Charter Making. Evolution in city charter making. *William Dudley Foulke*. *National Municipal Review*. January, 1915.

City Debts. Recent legislation relating to municipal indebtedness in Massachusetts. *Charles F. Geltemy*. *National Municipal Review*. October, 1914.

City Government. Municipal government in Manchester. *E. D. Simon*. *Political Quarterly*. May, 1914.

City Manager. The city manager plan, the latest in American city government. *Herman G. James*. *American Political Science Review*. November, 1914.

City Manager. The commission manager plan. *Henry M. Waite*. *National Municipal Review*. January, 1915.

Initiative. Municipal initiative, referendum and recall in practice. *Charles F. Taylor*. *National Municipal Review*. October, 1914.

Merit System. The practicability of the merit system. *Arthur M. Swanson.* National Municipal Review. January, 1915.

Municipal Experts. Administration experts in municipal governments. *A. Lawrence Lowell.* National Municipal Review. January, 1915.

Municipal Situation. Present phases of the municipal situation. *Clinton Rogers Woodruff.* National Municipal Review. January, 1915.

Public Library. The place of the public library in the administration of the city. *W. A. Schaper.* National Municipal Review. October, 1914.

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REFORM IN CHINA¹

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One of the most noticeable phenomena in the world history of the last two or three hundred years is the subjugation of Asia by Europe. Asiatic civilization and institutions have in the shock of conflict with European civilization and European institutions either succumbed or have been made to suffer great modifications. In some instances political control has passed from Asiatic to European hands. In others, while Asiatic rulers have been able to maintain themselves in at least nominal control, their freedom of action has been curtailed by treaties forced from them by the fear of the loss of political independence.

Furthermore, in those few cases of contact between the European and the Asiatic in which the latter has not suffered a serious loss of independence, European commercial and industrial organization has exercised a remarkable influence over Asiatic life. The steamship and the railway, both European inventions, have bound together the East and West in bonds so strong that it is futile to think that they will ever be broken, and have at the same time given to most Eastern countries means

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

of transportation which are surely and with continually increasing rapidity transforming the conditions of Eastern life.

The industrial organization of the West, finally, is also proving its economic superiority to that of the East. Most commercial products in whose manufacture the East and the West compete can be made more cheaply in Europe than in Asia. With the improvement in the means of communication between Europe and Asia the manufactures of Europe are consequently slowly but surely driving many Eastern products out of Eastern markets, and like the steamship and the railway also are gradually changing the living conditions of Eastern people.

We may therefore say without danger of contradiction that Western civilization and Western institutions are at the present time showing themselves more efficient than Eastern civilization and Eastern institutions, and that in the conflict between the East and West, which has probably only just begun, the West shows every evidence of becoming the victor.

Of course it is true that from an idealistic rather than a materialistic point of view the West may not be superior to the East. It may also be that in the long course of centuries the vaunted superiority of the West to the East may not be so evident if it may be said to exist at all. But it is certainly true that the immediate future will mark the further, even if temporary, victory of Western ideals. The materialism of the West will in all probability prevail over Oriental idealism. We may not envisage the future with satisfaction. Our ethical sense may be outraged by what we foresee. But with men as they now are, we can hardly fail to conclude that in the years soon to come the influence of the European upon the life of the world will increase rather than diminish.

If this increase of European influence is then to be regarded as almost certain, what should be the policy of an Asiatic country which still retains its political independence but at whose doors the European is even now knocking with the vigor and insistence which have characterized the European attitude towards Asiatic peoples during the past two or more hundred years? What in other words should be the present policy of China?

The general answers to these questions may perhaps be found in the history of the country during the past century. Whether due to the influence of her officials or to the honest feelings of the people as a whole, China's attitude toward the introduction of Western ideas has been for the most part one of hostility. It can hardly be denied that this attitude of hostility has been not only futile but disastrous. Chinese resistance to Western influence has been ruthlessly overborne. We are not here concerned with the ethical character of European policy towards China during the past century. It may be just as unethical as many Europeans have claimed. It may be just as detestable as its Chinese opponents deem it to be. But it is none the less true that Chinese opposition to it has both failed to prevent its adoption, and has plunged China into a pit from which the country is endeavoring now with great difficulty to extricate itself.

We may therefore assume that Chinese hostility towards the introduction into the country of Western ideas is an attitude which must and will be abandoned. We may also consequently assume that Western ideas will exercise in China an increasing influence in the years immediately before us.

The policy of China should therefore be to accord a more hearty welcome to the European than has been accorded in the past. At the same time, China should be careful both to guard against the enthusiasm of the recent convert to new ideas, and to adopt only that part of Western culture which is suited to her peculiar conditions. She should also endeavor to avoid the mistakes of which Europeans have been guilty and, in the new life which will spring up in the country, attempt to remedy those defects of Western civilization the existence of which the most ardent admirer of the West will not deny.

In order to carry out such a policy it is not sufficient for China to study Western institutions and become acquainted with Western ideas. Such a study must of course be undertaken. But it is every bit as necessary for China to know herself. It is absolutely essential that the difference between European

and Chinese conditions be understood. Where these differences are controlling European institutions must be modified, if a lively hope is to be entertained that the introduction into China of those institutions will be followed by the largest measure of advantage.

It is of course impossible in the space at command to indicate all of even the most important differences in the conditions of China and Europe. It is doubtful if it is in the power of a single person to make such an indication. It may not, however, be improper in this place to record what have seemed to one observer a number of the most important points in which China and Europe are not alike.

In the first place there is a difference in the economic basis of Chinese and European life. China is agricultural, Europe is industrial. Most of the things which are used in China are produced from the soil and are capable of almost indefinite reproduction, by ordinary agricultural processes. This is true not merely of the things which are used for purposes of food. It is also almost as true of such other things as clothes and many of the materials which are used for the purposes of house construction and for the conduct of the other ordinary affairs of life. Europe and America, which from this point of view is little more than a copy of Europe, place much less reliance than does China on vegetable products and much more on mineral and animal products. The Chinese clothes himself for the most part in cotton. The European makes much greater use of wool and leather. The Chinese uses the bamboo and the kaoliang. The European is accustomed to regarding himself as living in an age of iron. The Chinese very generally uses for fuel the waste of his fields. The European digs coal from the bowels of the earth.

The processes through which the Chinese obtains the products he desires are thus mainly agricultural in character supplemented by a system of household industry carried on by manual labor. On the one hand a highly developed agriculture has been evolved. On the other hand we find an industrial system which is often merely incidental to agriculture and almost never calls for a high degree of social coöperation.

The processes through which the European secures the products he desires are, however, industrial rather than agricultural in character. A highly specialized industrial system has been developed which is based on the factory and the steam engine and which requires for its successful pursuit a high degree of social coöperation.

The agricultural character of China on the one hand and the industrial character of Europe on the other have probably more far reaching effects on the people than at first sight would be supposed. Thus we find in China a stable population whose immobility is increased by the absence of good means of communication. Thus again we find that the economic need in Europe for larger undertakings due to the industrial character of its population has been accompanied by, if it has not been the cause of, a higher degree of social coöperation than has hitherto developed in China. This social coöperation is seen not only in the commercial and industrial but as well in the political life of Europe. Without it the great commercial and industrial corporations which are so distinctive a feature of European life would have been impossible. Had this capacity for social coöperation not developed it is difficult to believe that the representative government which is the commonly accepted form of government in European countries would have been possible.

The lesser degree of social coöperation evident in China, which may well be due in no small measure to the agricultural character of its population, must be borne in mind when China makes the attempt to introduce Western ideas. A form of industrial organization which has its basis in the corporation may be successful in Europe but unsuccessful in China unless it is subjected to those modifications which are suited to Chinese conditions. Representative government, certainly in the form in which we find it in modern European states, may well be impossible of adoption in China until such time as greater capacity for social coöperation has developed.

Another point in which Chinese differs from European life is to be found in the position which has been accorded to the

family. In Europe and America the bonds of the family are neither so far reaching nor so controlling as is the case in China. The European family begins to disintegrate as the children attain manhood. The power of the father over the children ceases when the children have grown up, and a duty of supporting one's brothers and sisters even, is not recognized either by the law or by public opinion. Family ownership of property is practically unknown.

In China, however, it is the family rather than the individual that counts. It is often the family rather than the individual in which the ownership of property is vested. The head of the family, which may embrace the children of a number of fathers who are the descendants of a common ancestor, has either by law or as a result of public opinion powers which are denied to the father of a single family by European law.

The difference in the position which is accorded to the family in Europe and China has had a marked effect upon the social organization. The individualistic ideas of Europe would seem to have made possible the concentration of property in a few hands. The family control of property in China, which often results in what in European law is spoken of as the suspension of the power of alienation, would seem to have brought about a more equal distribution of property than is found in countries having a civilization of European origin. Well organized classes based on inequality in the distribution of property have not developed as is the case in Europe.

The existence of the Chinese family idea, based as it is on ancestor worship, has further had the effect of rendering the population rather stable and immobile with the result of congestion at particular points, and has at the same time made difficult the development of social groups wider in extent than the family. The character of the family would thus appear to have hindered the development of social coöperation, difficult as it otherwise is under the agricultural conditions which obtain in the country.

The history of China would seem to show also that China has never developed to such an extent as is to be noticed in

Europe the conception of political authority. It is true of course that from time immemorial all political power which has been exercised in China has been supposed in the past to be vested in the Son of Heaven. As a matter of fact, however, political authority has never in China extended so widely as it has at the present time in Europe. China has really been the home of *laissez faire*. Her system of *laissez faire* has been, it is true, one in which the unit has been the family rather than the single individual and has been somewhat modified by the theoretically absolute powers of the Son of Heaven. But it still remains true that the conception of political authority as interfering with the daily affairs of life has not existed. China has been governed by precepts of morality and by custom rather than by law and edict. Where laws and edicts have been issued to supplement the force of moral precept and customary usage it has usually been deemed expedient to convince those affected by them of the reasonableness of the action proposed to be taken. Arbitrary decrees commanding a substantial departure from existing practice have been as compared with European life almost unknown.

The century long existence of this attitude upon the part of the Chinese people has had marked effects upon their psychology. They are in the first place much more conservative than are European peoples. Although not particularly combative in character they are capable of offering a passive resistance to changes, of whose reasonableness they are not convinced, which makes those changes difficult of accomplishment. Not accustomed to yielding obedience to arbitrary authority, whether that authority be a monarch or a popular majority, they must as a whole be convinced of the desirableness of unaccustomed action before they will take it. The process of convincing them is often a long one since practically the opinion of the whole people must be changed before action can be secured.

In the second place this *laissez faire* theory and this absence of the conception of political authority have had for their effect a lack of discipline in the Chinese people as compared with Europeans. Brigandage and riotous outbreaks on the one hand

seem to be of frequent occurrence. On the other hand social coöperation among groups not subjected to the authority of one ancestral or family head is difficult. The only marked exception to this rule is to be found in the merchant and trade guilds of which there are so many in China and which have assumed so many functions in European countries regarded as incident to political authority.

In the third place, the absence of the rule of law combined with the irresistible compulsion of a universally accepted ethical system has brought about an almost complete absence in the minds of the Chinese people of the idea of individual rights. This has also been furthered by the existence of the family and guild system in which the individual is merged and to which he must submit. If the individual obeys the dictates of moral precept and conforms to the demands of the family and the guild he is, as compared with the European, almost completely free from political restraint. If, however, he attempts to depart from the ethical code, and particularly if he is guilty of a violation of filial duty, which is the mainspring of family life, he is an outcast who possesses no rights and against whom almost any man's hand may be lifted with impunity. He certainly receives no protection from the state.

Chinese conditions are, finally, to be distinguished from modern European conditions because of the fact that the materialistic philosophy of the European has been characterized by the adoption of what may be called the scientific method of the conduct of life. By the scientific method is meant the generalization from recorded observations and the application of the generalizations made to other classes of phenomena through the process of experiment rather than as the result of the process of abstract reasoning. While this scientific method has perhaps always been characteristic of European action it is only within very recent times that it has received its highest development. Its use may, however, be said to be the most important contribution of the European to human progress. It has been the cause of the great triumphs of European efficiency and it is largely because of it that the European possesses that superiority in

the management of the material things of human life which must be accorded to him. Its possession differentiates the European from other peoples, who, for the most part, have been content to search for truth through meditation and *a priori* reasoning.

In attempting to adopt Western learning and to establish in China European institutions, allowance must be made for these differences if satisfactory progress is to be made. It must be remembered that at present China is agricultural rather than industrial, has comparatively little capacity for social coöperation, is governed by ethics rather than by laws promulgated by a recognized political authority, has not been subjected to discipline, has little regard for individual rights and has not as yet in large measure applied the scientific theory to the conduct of life.

Her agricultural character, when taken together with her large population, makes it impossible for her to dispose of large financial means until her industrial and mineral resources have been much further developed.

Her small power of coöperation makes it impossible for her until her conditions have been greatly modified to adopt the forms of representative government which have been followed by success in European countries and makes it desirable that her present industrial organization be subjected to a comparatively slow process of modification.

The fact that she has been in the past governed largely by ethical precept and has only a very dim conception of political authority make it desirable that the sanctions of her ethical system be relaxed only in proportion as the idea of political authority develops.

Her lack of discipline and her disregard of individual rights make it probable that a form of government which has many of the earmarks of absolutism must continue until she develops greater submission to political authority, greater powers of social coöperation and greater regard for private rights. For unless a strong government is established political disintegration is liable to occur and many petty tyrants will probably develop,

in whose presence the development of the conception of individual private rights will be well nigh impossible.

It may not be expected that the conditions existing in China will in a short time be so changed as to permit Western institutions in an unmodified form to be established in the country. It may be indeed that China will always continue to preserve almost unchanged some of the conditions which now obtain. If those conditions are changed, the development of the country may be different from that of Europe, in which long years ago existed many of the conditions now to be found in China. But so far as her conditions do not gradually come to approximate those of Europe it is useless to expect that the institutions which will be developed will be those with which Europeans are familiar. The problem in China is a Chinese problem. Its solution must be made not as the result of the attempt to copy Europe but, although it may be influenced by European ideas, must be worked out carefully and slowly in the light of Chinese traditions and history and in such a manner as to conform to the peculiarities of Chinese life.

While general Chinese conditions may not thus be expected to change with great rapidity, there is no reason to suppose that China may not, if she is convinced of the desirability of applying the scientific method to the conduct of life, take immediate steps towards the realization of that purpose. For its realization can be secured through a change in the educational system in China as well as by sending young Chinese abroad to study. It is, however, well to remember that probably better work will be done for China by educating large numbers of young men in China amid the surroundings in which they will be called upon to live and under the conditions to which they will be subject, than by sending a few abroad at the most impressionable age. It is not wise to subject those who are expected to be the leaders in Chinese life to the danger of becoming denationalized, of losing their reverence and respect for all that is good in China because of their admiration, often not discriminating, for the new civilization to which they are introduced and under whose spell, due to its present power and efficiency, they are

likely to fall. The foreign educated student always labors at a disadvantage when he returns to his native country after a long absence abroad. The conditions which then confront him are different from those with which he is familiar. This disadvantage becomes a serious handicap to the Chinese returned student. For the conditions to which he has become accustomed are totally different from those which he has to encounter.

The policy of China at the present time should then be:

1. To strengthen her governmental organization in order that she may protect herself against foreign aggression and cultivate among the Chinese people respect for political authority.

To this end a strong central government is necessary in order that all tendencies toward the disintegration of the country may be checked. To this end a strong executive is also necessary in order that a stable policy may be followed. What is known in political science as presidential government is more suited to China's needs than any form as yet developed of cabinet government. China's governmental institutions should be modeled on the German or the American system rather than upon the British or the French.

2. To develop the natural resources of the country, so that the life of the people may not be simply agricultural but as well industrial.

To this end it will in all probability be necessary for some time to come to rely on foreign capital, and in a large degree on foreign management as well, even if this resort to foreign assistance will involve an extension of the present privileges of extraterritoriality into sections of the country into which the foreigner is not now permitted to go. As Chinese capital accumulates, and as Chinese judicial institutions improve, it may be possible to place less reliance on the foreigner and to subject all persons in the country to the Chinese courts, but until such time it would seem to be useless to expect any great development of the country's resources except under considerable foreign control endowed with extraterritorial privileges.

3. To cultivate by every means possible a greater spirit of social coöperation in both the political and industrial organization of the country.

To this end it is necessary to establish in the central government a legislature and in the provincial and other local governments provincial and local councils which shall represent the most important classes, such as the merchants, the literary class and the larger property owners. What powers can safely be entrusted at present to such bodies it is somewhat difficult to say. It would seem, however, that for the present it would be wiser to lay greater emphasis on functions of advice than on powers of control. For China is so unaccustomed to popular government and has so long been subject to personal rule that it would be useless to expect that the country could at one bound successfully advance to the stage of representative and popular government which is characteristic of European and American countries. A serious attempt should be made, however, at once to offer to the classes of the people which are conscious of common interests and have intelligent aspirations the opportunity to participate more widely and influentially in the government of the country than they have up to the present time enjoyed. Otherwise the country will continue to be under the blight of absolutism and, so long as it does not have the security which comes from the determination of the question of succession by inheritance in a particular family, will possess probably the worst form of government which has yet been devised—namely a military dictatorship.

As the people become, through their participation in the work of government, accustomed to the management of public affairs, the functions of the various representative bodies may lose their advisory and take on more and more a controlling character. If for the time being it is believed to be desirable that the members of these representative bodies be appointed rather than elected or if elected be elected by a small body of voters, as time goes on probably less resort may safely be had to appointment as a method of selection and the number of voters may be increased.

The solution of the problem how to cultivate a greater spirit of industrial coöperation is extremely difficult. This problem has been solved in Western countries through the device of the

company or corporation. The success of the Western corporate idea in industrial and commercial life has been in large measure dependent upon three factors. In the first place there has been an independent and reasonably upright judicial system to which the shareholders of companies might have recourse in case their rights under the law were violated; in the second place, largely because of the existence of such courts, a spirit of trusteeship, of fiduciary obligation, has grown up among the people which has prevented the misuse of their position by the officers of companies for selfish, including family, interests. There has gradually developed in the ethical consciousness of Western peoples the belief that the first duty owed by a company officer is to his company and its shareholders. There is still of course large room for the further development of this belief. But it has already sufficiently developed to permit of the successful carrying on of commercial and industrial operations under the corporate form of organization. In the third place, the governments have in most instances scrupulously refrained from either seizing successful companies or from interfering with their management except in so far as such action was necessary in the public interest. Until such time as the conditions which have been outlined are present in China, the prospects of successful corporate enterprise in China under Chinese management may not truthfully be said to be bright. Until such time as an approximation to such conditions is reached it would seem that China must, as has been indicated, rely very largely on foreign management and submit to foreign control. If, however, China will make a serious, determined and persistent attempt to realize these conditions there is no reason to believe that she may not cultivate in time that spirit of social coöperation upon which successful corporate management of large commercial and industrial enterprises is based.

4. To lay greater emphasis as time goes by on private rights in order that the individual may be better protected than at present in the enjoyment of his life, liberty and property.

To this end it is necessary that the rule of law be substituted for personal rule. Laws must define in advance more compre-

hensively and clearly than is at present the case what are the rights and duties of individuals. Courts, to which the individual may with confidence resort in case his legal rights are violated, must be established. If we may judge by European experience such courts can be established only upon the condition that the judges are independent of the arbitrary control and interference of the executive. It will undoubtedly be necessary to provide some method for the punishment of corrupt and incompetent judges or for their removal from the bench, but any method which may be provided should carefully protect all judges from the arbitrary action of the executive and should secure them a public trial.

Finally, the adoption of the rule of law and the protection of private rights make it necessary that in ordinary times a large freedom of speech and of expression be accorded. The doings of the government should be open to criticism by private individuals and by the public press, provided such criticism does not take the form of seditious utterance. It is only where the press has a reasonable freedom that private rights are protected and that progress in popular government is possible.

5. To remodel its educational institutions so that coming generations may be able to apply the scientific method to the conduct of life.

To this end it will be necessary that greater emphasis be laid in the future than has been the case in the past on scientific and technical studies. Chinese learning in the past has been almost exclusively literary in character. The study of literature encourages the development of imagination and artistic taste. It does not, however, tend to develop habits of precision and accurate thinking. It does not concern itself in any high degree with the practical facts of life. It is idealistic rather than materialistic. Where literature is studied to the exclusion of other subjects there is a tendency to over-emphasize the memory at the expense of the reasoning faculties; to encourage the student to dwell upon the accomplishments of the past rather than to attempt the solution of the problems of the present or to forecast the progress of the future.

The reorganization of the government may form a large part of the future policy of the country. For improvement of the political institutions will make much easier the reconstruction of the country. But it can not be expected that political reform will accomplish all that is needed. It is, furthermore, to be remembered that in the reorganization of the government which will undoubtedly be undertaken, more stress will have to be laid in the immediate future upon power than upon liberty, upon the cultivation of respect for political authority than upon regard for private rights, upon government efficiency than upon popular representation. As power is consolidated, as respect for political authority develops and as government efficiency is secured, liberty will spring up, private rights will be established and popular representation will be evolved. The process will not in all probability be a quick one. For political change to be permanent is necessarily slow. In the meantime the Chinese people will have to be patient, satisfied if they are able to solve one by one the problems which the inevitable contact of the East with the West has presented to them. They will undoubtedly be assisted in their efforts by the change in social conditions which the adoption of Western institutions will bring about. The railway and the steamship will bind the country closer together, thus diminishing the danger of disintegration. The gradual change from an almost purely agricultural economy to one which is more industrial in character will tend to develop the capacity for social coöperation without which representative government in a Western sense is all but impossible. At the same time it will add to the financial resources of the nation. The increase of the financial resources of the country will strengthen the government and aid in the development of the conception of political authority, whose exercise will make possible quicker progress than may be expected under present conditions. The reform of the system of education will cause the coming generation to assume a more practical attitude towards the facts of life which can hardly fail to have a great influence on the psychology of the people.

But such changes as have been outlined take time for their accom-

plishment, and until they are accomplished, until in other words the social and economic conditions are quite different from what they are at present and bear a closer resemblance to the conditions of the West, it is useless to expect that a political organization based upon the conditions of the West can be advantageously adopted in China.

REMARKS ON PRESIDENT GOODNOW'S PAPER

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I have listened with unusual interest to the learned paper on "Reform in China" just read by President Goodnow. It seems to me, however, that the Occidental people find no end of difficulty in understanding and interpreting our Oriental laws, customs, and institutions. We are told, for instance, that the Chinese like other Asians, who are mainly agricultural peoples, are unfit for representative government. I doubt if this statement can stand the test of adequate proof. Take, for example, the people of China, whose recorded history runs back to 2800 B. C. These Celestials, these agriculturalists, had from time immemorial enjoyed local self-government, had been accustomed to "take communal action:" they would close up their business and resist the imposition of an unjust tax. It is to be remembered that the powers of the mother of parliaments developed in this fashion. "The financial functions of parliamentary assemblies are always the centre of their action."

In India, another agricultural country, we had the village community which contained the true germs of representative government. These village communities have frequently been described by such authorities as Sir Charles Metcalf, Sir Henry Maine as "little republics."

Further, we are told by Western critics that the Chinese, along with the other people of the Orient, are slow to move, that they are static, preferring to submit to the iron rule of an autocratic king. On the other hand those who have even a slight acquaintance with Chinese history know that the Chinese

are a democratic people. Mencius, the great Chinese political philosopher, put the people first, the gods second, and the sovereign third in the Chinese scale of national importance. Mencius once said to a ruler: "If you can win the hill people—that is, the humblest of the common folk—then, indeed, will you become the Son of Heaven." Again, when Wu Wang killed the tyrant emperor Chow some time in the eleventh century before Christ, the Chinese historians wrote: "Wu Wang did not slay his ruler; he simply executed a tyrannical individual."

In India, too, we find that the ancient Hindu law-givers have laid down that the misgovernment of a tyrant king not only constitutes a default of the ruler's title, but even a forfeiture of his life. Indeed, Manu himself has said that a king who oppresses his subject should be deprived of his life together with his relatives.

In Asia as in Europe the divine right of kings, the belief that the rulers were appointed by heaven, has, of course, found credence. But when these Asiatic monarchs failed to promote the general happiness of the nation, failed to live up to the will of heaven, they were given short shrift. They were removed and replaced by another sent of heaven. Historians seem to admit that such revolutions have taken place at least twenty-one times in China, resulting in as many changes of dynasty. Besides, there have been various usurpations of power of a limited scope, and if all these partial revolutions are considered, China, the so-called conservative China, can boast of no less than thirty revolutions.

The old assertion that the Asian people are unfit for self-government does not bear examination. Look at Japan! When the Asiatic Japan promulgated its constitution of a parliamentary government in 1899, the astonished Europe laughed. Has not the marvellous success of Japan—Asiatic Oriental Japan—in establishing and maintaining a constitutional government proved beyond the shadow of a doubt what other Asian nations could also do if they were free?

In India, the land where I first saw the light of day—the land where mighty empires existed and flourished long before

the English had ceased to dwell in paleolithic caves—in India, I say, the people are told today, after a hundred and fifty years' of "enlightened cultured" rule, that the Indians are not and never will be fit for self-government. How in the name of common sense can a country be fit for self-government, or for that matter for anything, unless it has a chance to try it out? Is it not almost a political truism that self-government alone fits a nation for self-government?

To be sure, some of the Oriental nations have shown incompetency: they have been found guilty of graft and corruption. We are sincerely sorry for them. But I have been informed on good authority that there are also many countries in the West which are not above the charges of graft and corruption. Are we to believe now that the Western nations have proved their inability for representative governments? For one, I have little faith in the judgment of patronizing Europeans, who on their annual summer tours in the United States brazenly ask: "How long can this republic endure?"

To conclude, I challenge the assumption that representative forms of government are the monopoly of the West. I resent the implication that the Orientals are in any essential manner different from the Occidentals. We of the East ask only one thing of the West. It is this—that you of the West stay away from us and our problems: leave us to solve our own problems, to work out our own destinies, while you spend your time looking after yours. The greatest good you can do us, the lasting benefit you can confer on us, is to let us alone.

THE SOUTHERN SLAV QUESTION

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"For my part," exclaimed Mr. Asquith at the great Guildhall meeting in September, 1914, "I say that sooner than be a silent witness, which means in effect a willing accomplice of this tragic triumph of force over law and of brutality over freedom, I would see this country of ours blotted out of the page of history." In giving utterance to these remarkable words, the British Premier was thinking not only of the tragic fate of valiant little Belgium, but also of the life and death struggle for liberty and independence of another small state whose history and position are much less understood by Europe, or by the world in general—Servia. "Give a dog a bad name and hang him," runs the old adage, which applies with peculiar force to the attitude of public opinion in this instance toward the Servian kingdom. For years the press of Austria-Hungary, copied unthinkingly by that of Germany and other European countries, has been at work deliberately giving Servia a "bad name." Unfortunately there have been too many dark pages in Servian history—pages stained by violence, intrigue and crime—especially in political circles, not to give just cause for grave criticism. Yet it is manifestly unfair to pass a final judgment upon an intelligent and courageous people by looking only at one side of the shield.

The old Servian realm, and with it the independence of the Servian nation, disappeared before the terrific onslaughts of the conquering Turks in the great battles of Maritsa (1371) and Kossovo (1389), and for nearly five hundred years the Servian people languished under the Ottoman yoke. The government was lax and indifferent. Life and property were unsafe; and no encouragement was given to economic or intellectual devel-

opment. Everything was at a standstill. But the Servian nation never lost sight of its national destiny and ideals. Every true Serb treasured in his heart the songs of the national minstrels and stood ever ready to respond to the call to arise and struggle for "the honored cross and golden liberty." But in the course of the struggles and vicissitudes of the centuries they became divided. Some passed under the rule of Austria-Hungary. Some were united to form the modern kingdom of Servia; and others remained under the sceptre of the Sultan.

The present Servia is composed chiefly of a race of peasant farmers. There are no great cities and few large towns. The peasants are a sturdy race somewhat rough and plainspoken, but an intelligent and kindly people. For many years they were lacking in unity, in resources and in leaders; but early in the nineteenth century they began to fight valiantly under Kara George and Milosch for freedom. Greatly handicapped in this unequal struggle with Turkey, they had recourse to all sorts of rough and ready methods to gain their ends; but it was not until 1856 that they actually acquired liberty of worship, of trade and of self-government. Complete independence was accorded Servia at the treaty of Berlin in 1878, and in 1882 she became a constitutional kingdom under Milan I. But the great task of transforming this feeble and distracted country into a stable and well governed state had only just commenced. The unscrupulous ambition and inherent personal weakness of her rulers, notably Milan I, who set up an absolute monarchy in 1883, and Alexander II, who, with his intriguing consort, Draga, was assassinated in 1903, seriously retarded the development of the country. The intrigues of ambitious and unscrupulous neighbors have increased still further the difficulties of her statesmen, and the confusion within her borders. Yet a constant improvement has been noticeable from year to year; and, during the last decade, a truly remarkable advance has been made. Since 1905 the government receipts have annually exceeded its expenditures; and her finance minister presents now a yearly budget of over £9,600,000. The total exports and imports rose from £4,364,-843 in 1901 to £8,968,392 in 1911. Her population, 96 per cent

of whom are Serbs and members of the Greek Orthodox Church, increased from over 2,400,000 in 1900 to 2,900,000 in 1910; and with the acquisitions of territory resulting from the two Balkan wars, it now numbers about 4,300,000.

As the state developed, an outlet to the sea and economic independence became matters of life and death to her. The former she secured at the end of the second Balkan War by the extension of her territory to the vicinity of Salonica, with which port Greece has given her free transit of goods. The latter she is still striving for, in spite of the steady opposition of Austria-Hungary. The dependence of Servia upon Austria has been marked, indeed, ever since her independent life began in 1878; and she has found a market for a large portion of her products with her big neighbor. So great has this been the case that as late as 1911 over 67 per cent of her entire trade was with Austria and Germany; and all her exports and imports had to be transported over rail and waterways controlled entirely by Austria and Hungary, who levied whatever rates were favorable to the development of their own commerce. Austria was willing to grant Servia small favors from time to time and to see her trade increase, but the Empire was determined not to permit the little kingdom to become independent economically or to play a dominant rôle in the commercial activities of the Balkans.

When Servia formed a customs-union with Bulgaria in 1905, Count Gotuchowski—then prime minister of Austria—inaugurated a tariff war against the Serb kingdom. This so-called "Pig War," in which Servian pigs, cattle, and agricultural products were excluded from the dual monarchy, resulted in great losses to the Austrians but led to the regeneration of Servia. Her people, forced to rely upon their own resources, became self reliant and progressive. Her statesmen turned to other states, like France, for national assistance and military supplies, and sought new markets in Egypt, France and England for the products of their country. Commercial agreements were signed in 1907 with Great Britain and other countries. Friendly relations were cultivated with their Balkan neighbors; and Servia entered upon a determined movement for economic ex-

pansion and independence. This customs war, however, engendered feelings of animosity between the peoples and governments of Austria and Serbia, and marked the beginning of a bitter rivalry between them.

There was also the political and racial side. The interests and sympathies of Serbia bind her closely to the Greek Christians and Serbs of the Balkans; and her foreign policy naturally centers about the numerous Serb peoples of southeastern Europe, of whom there are some 10,000,000 all told. These Slavic brethren furnish the greater part of the population of Croatia, Slavonia, Istria, and Dalmatia in Austria-Hungary, and of Bosnia, Herzegovina and Macedonia—lately under Turkish control. For years Serbia had been hoping to create a "Greater Serbia" out of these districts under the Ottoman sceptre, whenever the day of Turkey's retreat to Asia should come; and she was bitterly disappointed when Austria annexed Bosnia and Herzegovina in 1908. The Servian government, however, turned its efforts for expansion to the field of Macedonia. Here they were successful, and, as a reward for the services and sacrifices of Serbia in the two Balkan wars, her territory was increased by 14,900 square miles, or about 80 per cent.

Meanwhile, within the Austro-Hungarian kingdom a Pan-Slavic movement was taking on extensive proportions. To understand its real significance, however, we must first glance at the organization of the Austro-Hungarian government and its attitude toward the Slavs within its domain. Austria-Hungary is a dual state, inhabited by some sixteen different nationalities, but ruled by two—the Germans and the Hungarians—since the "Ausgleich" of 1867. The dual government was organized to preserve the equality and dominance of these two races; and has served well the purposes of its founders. Unfortunately, however, it contains no provision for amendment or development, while the times have changed and the need of readjustment has become imperative.

That Austria, at least, has been aware of this, is evident from the fact that in 1907 she gave her people universal suffrage and placed the representation in her popular assembly on

the basis of the population within the several subdivisions of the kingdom, ranging from one to every 30,677 persons in Salzburg, to one for every 75,414 in Galicia. The power of the German element in the lower house, however, remains intact, for they control a solid phalanx of 222 votes out of 516 and are often supported by the landed gentry of other races on the main issues of national importance; while the remaining deputies are divided by racial lines and divergent local interests. And the Herrenhaus (or upper chamber) is still aristocratic and largely Teuton, being composed of fifteen princes of the blood, eighty-one landed nobles, seventeen archbishops and bishops, and one hundred and fifty-nine life members nominated by the emperor for distinguished service. It must not be overlooked, moreover, that the Austrian government, while it has done much for the improvement of the masses and the development of industry and agriculture, and has been lenient in the amount of local autonomy allowed the various units of its kingdom, has devoted more of its resources to the advancement of the German districts in the centre and north than to the rest of the country. Bohemia has struggled constantly to get merely a respectable share of the annual budgets; and Dalmatia has been almost neglected for nearly a hundred years. This hardly seems just in a kingdom where the German population only amounts to approximately 9,950,000 out of a total of 28,572,000 (1910); though it must be admitted that this 9,950,000 control the larger portion of the wealth of the country. But would this long remain so, if the others had the same opportunities, advantages and privileges?

The situation in Hungary is similar; but there all attempts at reform, since the ballot act of 1874 and the constitutional enactment of 1885, have been in vain. The composition of both houses of parliament remains the same, and the Hungarian oligarchy retains its grip upon the reins of government. The house of magnates consists of fifteen princes of the blood, two hundred and twenty-nine hereditary Hungarian princes, counts and barons paying at least 6000 crowns a year taxes, thirty-eight archbishops and bishops of the Roman Catholic Church and twelve Protestant dignitaries, three delegates from Croatia-

Slavonia, and the governor of Fiume. The house of representatives, numbering 453 members, consists of 414 Hungarian delegates and 40 from Croatia-Slavonia. Election to membership is supposed to be based upon universal male suffrage depending upon a small property or income qualification. But in 1911 the proportion of electors to the entire civil male population was only 24.9 per cent and but 6.1 per cent of the whole population possessed the franchise. In fact, the old electoral law of 1874—well enough in its day—is still in force; but it is so confusing and complex in its details that one of the official organs described this franchise as “the confusion of Babel.” It is deliberately preserved and worked to keep the control of the franchise in the hands of the gentry and the Jews; and this oligarchy, as a result of the elections of 1910, still holds 346 votes out of 413 Hungarian representatives in the lower house. Corruption, bribery and intimidation have arisen to astonishing proportions; and a system of “pocket boroughs” has grown up, unequalled even in England in the eighteenth century, whereby the government holds in its hand the bestowal of 80–100 seats. In 1910 the presence of 173,000 troops was necessary to preserve order and ensure a successful election.

In non-Magyar districts a happy system was devised, by lowering the franchise in the towns and raising it in the rural districts, to preserve Magyar dominance. Thus in Transylvania, out of 74 deputies, 35 represent the 28 per cent of Magyar inhabitants and 30 the 72 per cent of Roumanian population. And Croatia-Slavonia, which contains one-seventh of the population of the kingdom, are accorded but one-eleventh of the popular representation. In addition, they have been denied any important share in the government or legislation of the country. Thus the Magyar element, numbering approximately 10,500,000 out of a total population of 28,289,000, maintains a complete control and exercises its powers for the promotion of its own interests and progress. In the construction of the national railways everything has been subordinated to the interests of Budapest and Vienna. All the main lines run to these centres and the traffic from the various outlying districts is forced to

pass through them. Rates are skillfully arranged to favor the Magyar and German shippers over the inhabitants of the more distant non-Magyar districts. The financial and economic development of the Austro-Hungarian empire is made to centre about the two capitals, while the outer fringe of Bohemian Galician, Transylvanian, Dalmatian and Croatian lands, has had to remain satisfied with the fragments and crumbs that were left.

The twin curses of the dual monarchy have been selfishness and immobility. Internal affairs have never been dealt with on their merits; and "immobility became the only pledge of equilibrium." In local affairs national development, racial coöperation, and economic progress were sacrificed to class interests and the demands of the two dominant races. In foreign politics, imperial interests have suffered constantly from the pressure of narrow national claims; and the execution of a successful policy of imperialistic expansion in the Balkans has always been seriously hampered by Magyar opposition which was opposed to the increase of Slavs within the monarchy and to any "Drang nach Osten" that was liable to augment this Slav population. In addition, the Austrian government has shown itself lacking in political acumen, and muddled its internal as well as its foreign affairs badly. "*Jamais je n'ai vu des gens si acharnés à travailler contre leur propres intérêts,*" wrote an unbiased diplomat of high repute. But Hungary must bear the chief blame for the failures of the dual monarchy. "From the standpoint of the internal cohesion of the monarchy," writes Mr. Steed, "the Magyar state has acted as a repellant force, powerless for good, powerful for evil; and pending proof to the contrary, students of Hapsburg affairs are constrained to regard the Magyars rather as a liability than as an asset of the Crown."

Nowhere has the failure of the Austrian and Hungarian statesmen been more pronounced than in their relations with the Croat-Serb peoples. These two Slavic races, united by blood, but unfortunately divided by religion, inhabit six provinces of the dual monarchy. Two, Dalmatia and Istria, are

part of Austria; two, Croatia, and Slavonia, lie within the kingdom of Hungary; and two, Bosnia and Herzegovina, are administered by the joint government of Austria-Hungary. The favorite Austrian maxim: "Divide and rule," is applied here in full force.

The compromise of 1868, which forms the basis of the present relationship of Croatia to Hungary, was forced upon the Croats in a packed diet. It has remained ever since a source of dissatisfaction and irritation. Ere long, a movement for Croatian unity and autonomy was started; and for forty years the Croats and Serbs struggled unsuccessfully for their liberties without any help from outside sources. The Hungarian authorities not only remained obdurate, but opposed the Croats at every point. They even violated frequently the recognized rights of Croatia and suspended the whole constitution in 1883. They professed to believe that every move of the Croats and Serbs for natural protection and local government was a step in the direction of rebellion and independence. And a policy of repression was practiced systematically to hold the people in subjection.

During the long rule of Count Khuen-Hedervary as Ban—1883 to 1903—these methods attained a marked success, but only through the medium of bribery, corruption and intimidation, and at a great cost intellectually and economically to the Slavic communities. The press was muzzled and all the best men driven out of political life. The national, or patriotic, party was crushed through a manipulation of the franchise, and corruption at the polls; but a small number of "irreconcilables" remained to continue the unequal contest. Led by Starcevic and Dr. Frank they succeeded finally in accomplishing a far-reaching work; the arousing in the youth of Croatia and Slavonia of a desire to serve their country and to see it free and autonomous.

In the nineties, the fruit of this labor began to be seen in the appearance of a large number of young men in the political life of Croatia. The leaders among them were certain young Croats and Serbs who had studied under Professor Masaryk

at the University of Prague, and who were imbued with the patriotic desire of winning freedom for Croatia. Newspapers were started in Prague and Agram to further this movement, and later the "Novi List" was issued at Fiume, where it was beyond the reach of the authorities of Croatia. The movement reached a head in 1903 when the Serbs secured the control of all the municipalities of Dalmatia except Zara, and the new leaders entered upon a vigorous contest to secure the rights of the people in the Croatian-Slavonian elections. An appeal was made to Franz Joseph for an audience, when he was on a visit to Budapest; but, unfortunately, on the advice of Hungary, this was denied. The Croats and Serbs were greatly disappointed, for they had always been faithful to the Hapsburgs and counted on their generosity and assistance in securing a fair deal in their contest for autonomy and liberty. Here the Austrians lost a great opportunity to take over the direction of the movement for reform in Croatia and to use it for the strengthening of the monarchy. The Southern Slav question was one of the most vital problems before the imperial government and no better solution could have been found than the addition of a third (Slav) member to the dual state. Unfortunately the special claims and interests of Croatia have always been presented to the rulers and the imperial advisers by either their prejudiced friends—the Austrian ministers—who were often indifferent to the welfare of the Slav communities, or by their enemies—the Hungarians. So the Croatian leaders drew away from Austria, and made a final appeal to Hungary, thinking that they could trust the sincerity of its leading officials.

By the adoption of the Fiume resolution at Fiume on October 2, 1905, the Croats formulated a program for securing freedom and unity through union with the Hungarian "Coalition Party." On October 16 at Zara the Serbs agreed upon an identical program; and the next year a Serb-Croatian Coalition Party was organized. Its platform contained two fundamental planks: the reincorporation of Dalmatia in the Croatian-Slavonian kingdom, and the removal of the "present intolerable conditions in Croatia." For Hungarian support to

obtain these things the Croats and Serbs were prepared "to fight side by side with the Hungarian nation for the fulfillment of its constitutional rights and liberties." The reforms so imperatively demanded in Croatia were: electoral reform and freedom of elections; "freedom of the press; right of assembly and association; judicial independence; irremovability of judges; and the formation of special courts to protect the citizen against political tyranny, and to punish arbitrary officials." But, alas, how they were deceived! The Coalition Party of Hungary patched up its quarrel with the Austrian politicians and left Croatia to fight its own battle.

During the next two years, 1908 to 1910, the Croats and Serbs were turned over to the tender mercies of Baron Paul Rauch. In spite of the fact that a new and determined spirit pervaded the land and that the Croat-Serb coalition secured fifty-seven out of eighty-eight seats in the diet by the elections of February 1908, Baron Rauch tried to crush the movement for reform. He began in a systematic and thorough manner to discredit and ruin the Croat-Slav Coalition by arresting some of its leaders and subjecting them to short prison sentences under various pretences. Officials connected with the coalition were dismissed or transferred to distant parts of the monarchy. An insidious and violent attack upon it was opened in the press, in which the cry of treason was raised and the coalition accused of conspiracy with the Servian government to break up the Austrian kingdom. An extensive system of police spies was put in operation throughout the Slav communities, including Bosnia, to discover evidence of this conspiracy. And among other false and untested evidence on the matter to be published—chiefly through the medium of the Pester Lloyd (the government organ) were the astonishing document known as "King Peter's Coronation Program" and the forged pamphlets of George Nastic, published in July 1908. The former was a misleading elaboration of an exaggerated Pan-Serb propaganda directed against Austria-Hungary, and the latter tried to prove that the "Slovenski Jug," a students' reading club in Belgrade, was a secret revolutionary society manufacturing bombs and intriguing in

Croatia and Bosnia as an agent of the Servian government. This attempt to create a conspiracy and give color to measures of repression, was accompanied by a lively hunt for traitors in Croatia and Slavonia; and, by the end of August 1908, fifty-three Serbs had been arrested and committed for trial. The notorious Agram High Treason Trial followed, lasting from September until January, 1909, which resulted in the acquittal of twenty-two suspects, while the other thirty-one prisoners were freed on April 2, 1910, by the Croatian court of appeal without trial, on the ground that the evidence contained in the indictment was not sufficient to prove the existence of high treason.

It was at this propitious moment that Baron Aehrenthal decided to annex Bosnia and Herzegovinia. When the administration of these provinces was transferred to Austria-Hungary in 1878, Count Andrassy remarked to Lord Salisbury: "J'ai mis le pied sur le tête du serpent;" and Aehrenthal thought to solve the Southern Slav question by bringing the whole body under the foot of Austria. He even hoped to include Servia, if the situation proved propitious.

The Servian government was compelled to remain an impotent spectator of the annexation, because it failed to secure the support either of Russia, or of the Powers, for its claims. But the popular indignation was so great and the attacks of the Servian press so violent that the Austrian minister thought a move against Servia might be safely launched. Accordingly on March 24 and 25 "interviews" with certain prominent officials, together with a letter from Dr. Henry Friedjung—Austria's greatest living historian—based on documentary evidence, were published in the *Neue Freie Presse* at Vienna with the intent to prove conclusively the complicity of the Croatian leaders and Servian governmental officials in a conspiracy against the Austro-Hungarian kingdom. These revelations created a great sensation, convinced the masses of the duplicity of the Servians, and seemed to justify the policy and action of the Austrian government during the recent crisis. But they were not permitted to go unchallenged. The fifty-two deputies of the Croat-Serb coalition, and Mr. Supilo of

the "Novi List" brought suit immediately against Dr. Friedjung; and in December 1909 the now famous "Friedjung Trial" took place. Dr. Friedjung produced copies of twenty-four documents and every effort was made to prove his case and to secure his acquittal—even the court attempting to intimidate and discredit the Servian witnesses. Nevertheless, it was shown conclusively that all the documents in question were forgeries emanating from a certain Bosnian, Vladimir Vasic (who signed himself as Milan Stefanovic) with the connivance of Count Forgach and the Austrian legation at Belgrade, and at the instigation of Count Aehrenthal. The Croat-Serb coalition was completely vindicated; the "Slovenski Jug" was shown to be a harmless literary society having no revolutionary tendencies and no connection with the Servian government; and the Servian kingdom was freed from the onus of treachery and conspiracy.

The terrorist character of all Servians, as described in the Austrian and Hungarian press, was materially modified by the straight-forward and dignified bearing of the Serb witnesses and the revelations of the trial. It was evident that they were not all bomb manufacturers and conspirators. When Dr. Spalajkovic—the under-secretary of the Servian foreign office—was called as a witness, "instead of the bespectacled bureaucrat of sinister and intriguing aspect whom we had been led to expect," wrote an impartial spectator, "there appeared a tall elegant figure of military carriage, whose courteous and dignified demeanor presented a striking contrast to the studied impertinence with which he was received. Under extraordinary provocation, he invariably kept his temper and showed himself to be a worthy representative of Servian diplomacy." But the seeds of deception had been sown, and it became impossible to disassociate the name of Servia from intrigue, corruption and implacable enmity to Austria in the minds of the Austrian people.

"Count Aehrenthal has been forgiven for excluding morality from politics," wrote the *Agramer Tagblatt* on November 10, 1910. "Will he also be forgiven for destroying by his tricks

the reputation of the monarchy?" To this question one should add another: "Will he be forgiven for having aroused by his policy toward the southern Slavs a spirit of distrust and enmity between the Austrian and Servian peoples?" Of course no one man can ruin the reputation of a great state. Its character can only be temporarily affected; but it may have to pay the costs of his errors and indiscretions. "Count Aehrenthal," wrote Karl Kraus in *Die Fackel* for January 4, 1910, "who has not stinted our money over preparations for war and proofs of its necessity, who has misused our faith in order to sacrifice our blood, *he* does not leave us in the hours of doubt, he does not go into exile among the Eskimos, he, the condemned of this trial, gives us no public apology, and *we* shall pay the costs." It is the misfortune of Austria that in spite of her remarkable progress during the past eight years in all lines of public service—particularly in the field of political liberty—she is still severely handicapped "by the reactionary influences of the ruling oligarchy in Hungary" and of a similar powerful aristocratic element within the upper circles of Austria. These influences more than anything else have stood in the way of reforms in the field of foreign politics, have prevented the exercise of modern and liberal methods, and have proved the greatest obstacle in the solution of the Southern Slav question.

Count Leopold Berchtold, minister of foreign affairs from February 1912 till January 1915, and an able, well-intentioned statesman, failed to grasp the real significance of the grave crisis which his country was facing. He, too, unfortunately strongly influenced by the reactionary elements, took a narrow partisan view of the Southern Slav question. Greatly disturbed by Serbia's large territorial gains in the two Balkans wars, and aroused by the arrogant, defiant attitude of the Servian press, he and his advisors watched every movement of the Servian government with distrust. They returned to the old policy of makeshifts and Servian domination, believing that the only solution of the Southern Slav problem lay in the complete subservience of the little Slav kingdom to the dual mon-

archy. And they began to look about for an opportunity to reduce her power and to place her permanently under Austrian leading-strings. The murder of the Archduke Franz Ferdinand on June 28, 1914, furnished a ready and stupendous weapon. With it the dynasties of Austria and Germany were induced to give their consent to stern measures against Serbia. With it the horrified people of both these countries were aroused to a state of unprecedented enmity toward the little Servian kingdom. With it the military and aristocratic parties in the German empire and the Austro-Hungarian kingdom were able to force the hands of their governments and bring upon Europe the war, for which they had long been preparing. It is true that certain very grave dangers existed for Austria in the new strengthened position of Serbia and in the continuance of an anti-Austrian agitation there—unfortunately materially increased since the recent victories of Serbia in the Balkan wars; but these dangers were magnified out of all proportion to their importance. An enlightened and honest Austrian government, treating its own Slavs with equity and justice, facing its own internal problems with determination, fairness and broad-mindedness, and executing a liberal and sane foreign policy, had nothing to fear from Servian agitators or European animosities.

There is no doubt but that the attacks of the press of Belgrade upon Austria were unreasonably violent and that a strong anti-Austrian propaganda throughout the country had given birth to an intense popular animosity toward the Austrian régime. The Servian government has been criticised—and perhaps justly—for not having put down this agitation with a strong hand. But in this connection one must remember that no party could have remained long in power that attempted to interfere with the liberty of the press on a question of such national importance, and that the government is forbidden by Article 22 of the Constitution to confiscate newspapers or to take extreme measures against editors. And it must not be forgotten also that the Austrian and Hungarian press was just as violent as that of Belgrade and that a great deal of the blame for the animosity of the Servians lies with the Aus-

trian leaders. Unfortunately Austria cannot show any sustained or enlightened effort on the part of her statesmen at any time to win the confidence and respect of the Servian people. On the contrary a short-sighted selfish policy of repression and opposition to Serb ambitions, national ideals and progress, through a long period of years, aroused the suspicion and enmity of a proud and sturdy race. The popular agitation fathered by Count Aehrenthal and his kin to discredit the Servian nation recoiled on its promoters. They sowed the wind and their successors are now reaping the whirlwind.

It was not the danger from Servian agitation and plots, however, that stirred the Austrian statesmen so profoundly. It was rather the stumbling block which Serbia created in the way of Austrian expansion in the Balkans. For nearly two hundred years Austria and Russia have been competitors for the European lands of Turkey, whom they hoped one day to see ousted altogether from the Balkan territory. Russia changed her policy from territorial expansion to one of political domination; and, grasping the full significance of the varied and strong nationalities of the Balkans, she gave liberally of her resources and of the blood of her subjects to achieve the independence of Greece, Montenegro and Bulgaria and undertook the rôle of protector of all Greek Christians and of the small kindred Slav states.

From 1825 until the establishment of the Roumanian and Servian kingdoms in 1881, she hoped to limit the Balkan communities to mere principalities, enjoying indeed local autonomy, but kept under her domination by intrigue and intimidation. The development of the principalities was seriously retarded by this subservience of Balkan policies to Petersburg policy; and Russia reaped only trouble and discomfiture from it. Realizing at length the folly of this diplomatic program and recognizing in the growing national spirit of the various Balkan peoples something that could no longer be ignored or tampered with, she adjusted her Near-East program to conform with the conditions of the present time. The Russian authorities only grudgingly recognized the establishment of a

greater Bulgaria in 1885, through the addition of eastern Rumania. But by the end of the nineteenth century the remarkable progress of Roumania, Bulgaria, Greece, and Servia, and their future prospects, had become apparent. Then Russia saw that her interests as well as the salvation of the Balkans lay in the success of these little states and in the preservation of their independence. In this way not only would the advance of Austria be thoroughly checkmated but also the prosperity and progress of the Balkans assured. Her brotherly interests in the Slav communities would be satisfied as well. So the czar of all the Russians ceased all interference in local affairs and directed his attention to the cultivation of the confidence and friendship of the Balkan governments, and his energies to the creation of a permanent "status quo" in the peninsula. The Balkan alliances and the Balkan wars did not disturb Russia, for their results were seen to be in accord with the new policy of Petrograd.

Austria-Hungary on the other hand, has not materially altered its Balkan policy since the days when Maria Theresa and Frederick the Great of Prussia agreed to the partition of Poland to prevent Russian expansion on the Danube, and when Joseph II and Catherine II attempted a joint triumphal march on Constantinople. She has never abandoned the hope of seeing the Austrian flag floating on the shore of the Aegean Sea. From a German state playing an important rôle in central Europe as head of the Holy Roman Empire she has been gradually transformed into a composite nation in which German, Magyar and Slav elements strive for recognition and control. Losing her Silesian, Netherland and Italian possessions, being disappointed in her aspirations toward Bavarian expansion, and having her leadership in German affairs wrested away from her by Prussia, she was forced to seek "compensation elsewhere." Territorial expansion in the Balkans was a natural consequence and an imperative necessity if Austria was to remain one of the great powers. This new program was the basis of a secret understanding of the emperors of Austria, Germany and Russia in 1872; and the assigning of the administration of Bosnia

and the Herzegovina to Austria in 1878 and the incorporation of these territories within her domains in 1908 were but incidents in its execution. The movement became economic as well as political; and the authorities of Vienna exerted every effort and influence to secure political and diplomatic control wherever possible and to obtain for Austria-Hungary a dominant part in the trade and economic development of southeastern Europe. This ambition became a dominant factor in their foreign policy and the people were taught to believe it a matter of national destiny. In many ways their efforts were crowned with success. They annexed Bosnia and Herzegovina, created an independent Albania subject in a large measure to the control of Austria and Italy, and made it practically impossible, in diplomatic circles, for any important Balkan question to be settled without their coöperation and consent. They financed a railway from Nisch via Uskub to Salonika, secured control of all the important rail and waterways leading out of their domains, maintained a strict economic dominance over Servian development and trade, and obtained an enormous share of the commerce of southeastern Europe.

The ambition of the Austrian statesman was certainly legitimate. In some ways, it was a matter of life and death for the monarchy. But unfortunately they selected a difficult and thorny path for their expansion and the methods employed to advance their cause were not above criticism. In their way stood a number of independent states whose people were antagonistic to Austria in religion, in blood relations and in political ideals. Where Russia would have been welcomed as a brother and friend, Austria-Hungary was met with sullenness and suspicion, as an alien and an enemy. And where every effort should have been made to secure the confidence of the Southern Slavs, the policy and methods of the Austrian statesmen have roused nothing but hatred and suspicion.

Although trying seriously to aid the Slavs, as in their successful administration of Bosnia and in the matter of the Macedonian reform during the years 1903-1908, the Austrian

authorities failed to show a generous and unselfish spirit. Their policy was always more Austrian than Balkan. It showed little sympathy for Slavic ideals and ambitions, and has always been tainted with intrigue and injustice. There has been too much of arrogance, of selfishness, and of the rattling of sabres, and too little of national courtesy, tolerance and conciliation.

It is claimed that it was the ambition of the late Archduke Francis Ferdinand to make Austria the leading Slav power of Europe, and to give all the Slav peoples of southeastern Europe a chance to work out their destinies under her protection. He was undoubtedly the one man in the kingdom with sufficient experience and strength of character to carry out such a program. He was not so circumscribed in action by the traditions and promises of the past as the Emperor Franz Joseph; and he was regarded by the people as the one great hope on which the future of the kingdom depended. He was a real friend of the Croats and Serbs within the Austrian domains; and on various occasions he showed that he understood and sympathized with their position. But he was unalterably opposed to Servian expansion or the erection of any Slav hegemony or federation in the Balkans.

The only practical course open for Austria if she was determined to expand in the Balkans was to increase her federated government by the addition of a Slav state on the same basis on which the dual monarchy was founded. If worked out skillfully, the Hungarian element might be offset by the Slavic so that the Teutons would still retain the predominating voice in public affairs. If Austria-Hungary had a federal organization with a workable scheme for the incorporation of new territory like the United States, the problem would be an easy one. But she is not a real federal state and her fundamental laws are not easily amended or adjusted to new conditions. Nor are her people homogeneous or united; and it is still a question whether Austria, with a Slav problem of her own unsolved, can afford to embarrass her state by the addition of more Slavs. Thus far the Vienna statesmen have succeeded in maintaining a

fair sort of balance between the various national elements that compose their polyglot state, and between the numberless conflicting interests claiming recognition and support within their realm. To alter this balance is a precarious undertaking. Unless the affair is handled with the greatest skill and most profound statesmanship, and the utmost care is exercised perpetually, catastrophe will follow; and the prophecy of Prince Gortschakov at the Berlin Congress, "The tomb of Austria is in the Balkans," will become a fatal reality.

With these thoughts and aspirations in their minds the Austro-Hungarian leaders were greatly disturbed by the expansion of Serbia, Greece and Bulgaria in the Balkan wars. It called for considerable readjustment in their plans and placed them in an anxious and precarious position in Balkan politics. And, when the only man capable of carrying through successfully with a firm and just hand the needed internal reforms and the national Balkan policy was murdered in cold blood, their indignation knew no bounds. The grave dangers of the situation, both to their Balkan plans and to the existence of their state, were fully apparent to the Vienna statesmen and to the people. It is probable, however, that the extent of the danger was overestimated. At any rate, the Austrians were convinced that a malignant cancer had been discovered on the body policy of the Balkans. It must be eradicated at once, even though the operation was painful to the branch on which it was found, i.e. Serbia. This erring and vicious member of the Balkan society must be punished and brought to heel at once; and a Commission of Inquiry was set to work immediately after the murder to ascertain the evidences of its guilt. We are not told, however, how the punishment of Serbia was to pave the way for the solution of the ever vexing Southern Slav question, or how the humiliation of that small state was to serve in the solving of Austrian internal problems or in the immediate advancement of her Balkan ambitions, unless, indeed, it were forced to come within the Austrian state in the course of the proceedings.

At six o'clock on the evening of July 23, 1914, the Austro-

Hungarian minister at Belgrade delivered an imperative note to the Servian foreign office, which called for an answer within forty-eight hours. Serbia, in addition to arresting immediately, Major Tankosic and Milan Ciganovic, and putting a stop to the smuggling of arms across the frontier, was asked to pledge herself to "suppress every publication that incites to hatred and contempt of the Austro-Hungarian monarchy," to dissolve at once the "Narodna Odbrana" and all other anti-Austrian societies, and to "consent to the coöperation of representatives of the Austro-Hungarian government in Serbia to help suppress the subversion movement against the territorial integrity of the monarchy." Official representation in the trial of those conspirators living in Serbia was, further, demanded by Austria; and all persons in the military and public service who had participated in the promotion of the anti-Austrian propaganda were to be dismissed. And, finally, the Royal Servian government was asked to publish in its official organ on July 26 a statement affirming that it condemned the propaganda directed against Austria-Hungary, regretted the participation of Servian officers and officials in this propaganda, and disapproved of "every thought and attempt to interfere with the destiny of the inhabitants of any part of Austria-Hungary."

At the same time Serbia was informed of the findings of the court at Sarajevo. Its investigations, based on the testimony of the criminals and certain witnesses, were said to have proved that the murder of Archduke Franz Ferdinand was planned by Gavrilo Princip, Nedeljko Gabrinovic and Trifko Grabiz, with the help of Milan Ciganovic and Major Voijsa Tankosic. The two latter gave the bombs and pistols to the others in Belgrade, trained them in their use; and Ciganovic, with the assistance of certain frontier officials smuggled them with their weapons over the Bosnian border. The inference was that all the men concerned in the conspiracy were Servians, but it has been shown since that two—Princip, who killed the Archduke, and Ciganovic, were Austrian subjects.

In a note to the powers, dated July 24 and containing a copy of the note to Serbia, the Austro-Hungarian government

maintained that the Archduke and his consort "fell victims to a plot hatched in Belgrade." In the "dossier" accompanying the note to the European governments it was stated that while the entire Servian press was advocating war on Austria, a number of societies were formed to prepare for war and for the tearing away of the southern portions of Austria from that monarchy and adding them to Servia. Chief among these societies was the "Narodna Odbrana," which, while pretending to be only a culture society, devoted to the physical, intellectual and material development of the Servian people and nation, was a secret revolutionary body engaged in anti-Austrian conspiracies.

Evidence was given to prove that this organization maintained schools for the instruction of bands of men in bomb throwing, shooting and the laying of mines, and was utilizing the Servian public schools to spread its anti-Austrian propaganda. And an effort was made to demonstrate that the attempt upon the lives of Austrian officials in Agram (Bosnia) in 1912, 1913, and May 1914, as well as that upon the Archduke and his consort, were committed by members of the "Narodna Odbrana," and that some connection existed between it and the Servian government—or at least some government officials. As proof of the nefarious business of this society, its official organ was quoted as stating "part of the main task of the Narodna Odbrana is to effect union between its brothers far and near, on the other side of the border, and with all the rest of our friends in the world" and to preach to the Servian people "the sacred truth. . . . that the monarchy (Austria) aspires to rob Servia of her liberty and of her language, and even to destroy her."

There is little doubt but that the case against certain Servian societies and citizens was very grave. The government and subjects of Austria-Hungary were, also, suffering much commercially and economically, because of the attitude of the Servian nation. And the danger from the ramifications within the Austrian lands, of the Serb plots, was probably far more serious than the public knew. Yet it is one thing to demand the immediate punishment of criminals and criminal

societies, and quite another to threaten a whole state with violence and even destruction. "No country has suffered more than Russia from outrages planned upon foreign territory," said Mr. Sazanof to the Austro-Hungarian charge d'affaires at Petrograd. "Have we ever claimed to adopt against any country whatever the measures with which your newspapers threaten Servia? Do not enter upon that path."

Yet in spite of the fact that the official press admitted that "since these statements (in the 'dossier') have not yet been investigated, no opinion can be formed for the present as to their validity," the Austro-Hungarian government was ready to condemn the Servian government and people on the interested testimony of a few criminals and witnesses, of complicity in, and responsibility for, one of the most heinous political crimes in history; and this without giving time for the testimony to be sifted, or for Servia to produce new evidence or elaborate any defence. In fact, forty minutes after the Servian government had returned a conciliatory answer to the Austrian ultimatum, it had been adjudged unsatisfactory by the Austrian minister at Belgrade and he was "en route" for Vienna.

"The unscrupulous agitation which has gone on for years in Servia" wired Emperor William on July 28 to Czar Nicholas, "has led to the revolting crime of which the Archduke was the victim. . . . Undoubtedly you will agree with me that we two, you and I, as well as all sovereigns, have a common interest in insisting that all those *morally* responsible for this terrible murder shall suffer deserved punishment." This was undoubtedly the feeling not only of the rulers of Germany and Austria, but also of the press and people of both countries. No one stopped to consider how far the Austrian press and government were responsible for the continued agitation among the Serbs within and without the Austrian monarchy. Nor how much they had contributed to the antagonism and animosity existing between the subjects of the two neighboring states. Nor how large a part the policy of repression and persecution, practiced for many years by Austrian and Hungarian leaders toward the Slavs of the Austrian monarchy,

may have played in producing the conditions that led to the royal murder. But all united unhesitatingly in laying the whole blame, both for the existing situation in the Balkans, and for the murder of the Archduke, upon Serbia and the Servian people.

The German and Austrian diplomats, correctly gauging the state of the public mind, saw that the monarchs and people of both states were ready for a military expedition. Popular demonstrations in the capitals of both countries showed instantly the public favor with which the promise of strong measures was received. The Austrian authorities then determined to undertake the punishment of Serbia themselves, for reasons of national honor and security. "It is incompatible with both the dignity and the self-preservation of the Austro-Hungarian monarchy," wrote the German chancellor to the imperial ambassadors at Paris, London and Petrograd on July 23, "that it should continue to look on inactive at the plotting across the border, which continually jeopardizes the integrity of its territory." That Austria was determined to act with promptness and force is further shown by the ultimatum which itself contained Serbia's answer to be returned within forty-eight hours. "I have never before seen one state address to another independent state a document of so formidable a character," said Sir Edward Grey to Count Mensdorff, Austrian minister in London. Surely such an important note would require time, not only for the formation of a proper answer by Serbia—M. Pashitch, the prime minister, being absent at the time from Belgrade—and for an exchange of views until a complete understanding could be reached, but also to afford an opportunity for Russia, and, if necessary, for the Powers to intervene in bringing pressure to bear on Serbia and in preventing European complications. European sympathies generally were with Austria; and the Powers were prepared to admit that she had just cause for complaint and for insisting on energetic measures. But it was hoped she would proceed slowly along recognized diplomatic lines, allowing Serbia an opportunity to state her case and to arrange for reasonable amends. The requests of Russia and

England, that more time be given Serbia, were declined by Austria on the ground that it was too late; and the suggestion of Sir Edward Grey for a conference of Germany, Italy, France and England, as well as Russia's offer of direct discussion with Austria, were both ignored because Austria and Germany wished to localize the trouble so that Austria could settle the affair in her own way and to her own satisfaction. No attention was paid even to the last great effort of Grey who offered to secure the consent of France and Russia to any scheme that Germany might propose, which would make possible a settlement of the difficulty without the risk of European war.

The real motive for the now famous ultimatum was not after all so much to punish Serbia, as it was to secure the position of Austria-Hungary in the Balkans. "The agitation conducted by the Pan-Slavs against Austria-Hungary has, as its principle aim," wrote the German Chancellor to the Confederated Governments of Germany, "the dissolution or weakening of the Triple Alliance by means of the destruction of the Danube Empire, and, as a result, the complete isolation of the German Empire." Germany was ready to use its influence to localize the trouble and give Austria free swing. Or failing this, through the intervention of Russia, she would "support the neighboring monarchy with the entire might of the German Empire."

Here one can lay the finger upon one of the real causes of the war. The situation was so grave, and the danger to the dual monarchy and the Triple Alliance so great, that the two allies were prepared to settle all the questions at stake by the sword, if diplomacy failed. Unfortunately the diplomats were not given a fair opportunity; and the future lies on the knees of the God of Mars. But will future historians be able to prove that the blundering diplomacy of Austrian statesmen and their systematic cultivation of racial hatreds and rivalries in the Balkans were *not* dominant factors in creating those dangers which threatened the monarchy in 1914? And will they be able to justify the appeal to force so skilfully advocated by leading authorities in both the empire and the dual monarchy?

"The moment is still favorable for us," wrote the *Mili-*

tarische Rundschau of Vienna. "If we do not decide upon war, the war we shall have to make in two or three years at the latest will be begun under circumstances much less propitious; now the initiative belongs to us. Russia is not ready, the moral factors are for us, might as well as right. Since some day we shall have to accept the struggle let us provoke it at once. Our prestige, our position as a great power, our honor, are in question. There is still more, for in all probability it is our existence which is at stake. 'To be or not to be'—that is really the big business of today."

GOVERNMENTAL REORGANIZATION IN ILLINOIS¹

JOHN A. FAIRLIE

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In its broad outlines the state government of Illinois resembles that of most of the American States—but with the most recent tendencies as yet only slightly developed. The present state constitution, adopted in 1870, illustrates the political ideas prevalent in the middle of the nineteenth century—the election of all classes of public officials, the disintegration of the executive branch of the government, and the distrust of the legislature, and the provisions of this constitution are stereotyped by an amending article under which alterations have proved almost impossible. There has, however, been an increasing development of administrative authorities, created by statute, and added one to another with almost no attempt at systematic organization. From 1909 to 1913, there were not less than 34 new state offices, boards and commissions established, and the total number of such executive agencies is now approximately 130.

Under the present arrangements, there is no correlation between related offices, and little or no effective supervision; there is no budget system and no adequate accounting system. As a result the public administration is inefficient and wasteful; it fails to furnish the general assembly with satisfactory advice on legislation; and there is no clearly defined responsibility for the conduct of public affairs; appropriations and expenditures have been rapidly increasing, the appropriations in 1913 for two years amounting to nearly \$38,000,000.

Passing over isolated and minor efforts, there are two distinct and important projects now actively before the state and the

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

coming session of the general assembly involving extensive and fundamental changes in governmental organization. One is the definite series of proposals of an efficiency and economy committee, created at the last session of the general assembly, for the reorganization of state administration. The other is the proposition for a convention to revise the state constitution.

ADMINISTRATIVE REORGANIZATION

The efficiency and economy committee consists of four members of each house, and was organized to make a general investigation of the numerous state boards, commissions and bureaus established by statute, with a view to consolidating and reorganizing them so as to promote greater economy and efficiency. The report of this committee is now ready for submission to the general assembly; and it is my purpose here, to discuss briefly some of the methods of the committee, and the general principles of its proposals.

As a basis for its work the committee has had prepared a survey of the administrative authorities and services of the state, with comparisons of conditions in other states and countries. A series of reports on different groups of administrative agencies has been made—largely by members of the faculty of the University of Illinois—forming it is believed the most comprehensive study ever made of the organization, powers and duties of the executive administration of any state government. These will be published as appendices to the committee's report.

Following the submission and consideration of these reports, a series of tentative plans of reorganization were approved; and a preliminary report outlining the general scheme was published. These plans were then further discussed, at a series of public hearings held in Chicago and Springfield, with public officials, representatives of associations and other citizens, resulting in some modifications of the tentative plans. Later meetings of the committee have been given to formulating its report, and the consideration of bills to carry out the reorganization proposed.

As a result of this procedure, the plans recommended form a comprehensive and related series, covering the whole field of

state administration, as created and regulated by statute. These plans have been based on a detailed study of the existing authorities and their present powers and duties; and they thus present what may be called a "practical" program, rather than a purely ideal scheme of state organization and activities. This does not mean that the recommendations are limited to those which can be easily enacted into law at once. It means that the plans have been prepared with reference to existing conditions, and that they are adapted to prompt adoption and execution. No extensive changes have been proposed in the substantive law; although in some cases the existing legislation has been consolidated and simplified in the bills to be presented.

The plans presented propose the organization of the state administrative services into a series of ten principal executive departments, as follows:

Finance, education, charities and corrections, public works, labor and mining, agriculture, health, trade and commerce, military affairs and law. A few offices will remain outside of these departments, as the secretary of state, the civil service commission and the legislative reference bureau. So far as possible under the present constitution these departments will be under the control of officials appointed by the governor, with the advice and consent of the senate; and in each department will be organized the several bureaus and offices dealing with closely related public services.

Some variation in the organization of the several departments and the powers of the central authority has seemed better suited to existing conditions than a strictly identical system for all. Thus in some departments, as agriculture, labor and mining and law, there will be a single official at the head. In other cases, as in finance, education and charities and corrections, the general authority will be a board or commission. But the present confusing chaos of organization will be materially simplified. Single officials are recommended for distinctly executive work; and boards are proposed only for advisory, quasi-legislative and quasi-judicial functions. The number of boards will be largely reduced; and the boards proposed will be for the most part com-

posed either of unpaid members, or of members paid salaries for full time service. Boards whose members are paid for part time service, and provisions for the representation of more than one party are disapproved. Many of the existing boards will be abolished, merged with other authorities, or replaced by single officials.

Probably the most important part of the proposed plan is that for the department of finance. For this there is recommended a state finance commission, composed of a state comptroller (as chairman), a tax commissioner and a revenue commissioner, appointed by the governor and senate, with the elected auditor of public accounts and state treasurer *ex-officio*. The commission will have general supervision over the department, while each official will have important specific powers; and the department as a whole will deal with the assessment and collection of revenue, the preparation of a budget, and control over expenditures, forming a more comprehensive organization of finance administration than in any state of this country at the present time.

The plans of organization for the proposed departments will, it is believed, provide for an effective correlation and supervision of state administration, and for a comprehensive budget and system of accounts, which should greatly increase its efficiency, and bring about a direct saving in expenditures, estimated at almost a million dollars a year. The new administrative organization should also aid the general assembly in connection with legislative matters and should establish a responsible system of government in this state.

CONSTITUTIONAL CONVENTION

Among the serious obstacles to a thorough reorganization of state administration in Illinois, are the constitutional provisions for the election of a number of executive officers in addition to the governor; and a complete scheme of administrative reorganization will require the amendment of the state constitution. Several other changes in the state constitution have been

vigorously urged for several years, including an amendment on taxation, the initiative and referendum, the abolition of the system of cumulative voting for the house of representatives and woman suffrage. None of these proposals have, however, been submitted, partly because of a provision in the present constitution, prohibiting the amendment of more than one article of the constitution at a time, which has brought about a deadlock between the supporters of rival amendments. This in turn has led to proposals for an amendment of the amending article, which has added to the complexities of the situation.

A resolution to submit to the people the question of calling a convention to revise the state constitution was passed by the senate at the last session of the general assembly; but failed to pass the house of representatives. During the year 1914 there has been organized a constitutional convention league to urge the calling of a convention; and more than the required two-thirds of each house of the 1915 general assembly are said to be committed to submitting the question of calling a convention at the next general election.²

A considerable number of amendments to the constitution have been actively urged; and with the present restrictions on the adoption of amendments submitted by the general assembly, a convention seems the most effective method for securing these changes. At the same time it must be admitted that no definite program for a general revision of the constitution has thus far been presented. If a convention is to be held, there is need for a large amount of preliminary study of how the provisions of the present constitution work and of the numerous changes proposed in this and other States.

As a partial step toward meeting this need, there has been organized a committee from the law and political science faculties of the University of Illinois, the University of Chicago and Northwestern University, with others actively interested in public affairs. This "Universities Committee" has undertaken to

² A joint resolution to submit the question of calling a constitutional convention was again passed by the senate in March, 1915, but again failed to receive the required two-thirds vote in the house of representatives.

collect and digest the materials needed for the work of a state constitutional convention, and to discuss and analyze various proposals for constitutional provisions. Meetings have been held at intervals for about a year; and it is expected that these studies will be completed and the results published and made available for the general public and for a convention if it is called.

It may also be noted that the efficiency and economy committee in its report recommends that the general assembly provide for a comprehensive survey of state and local government, as a basis for future statutory and constitutional changes. Such a survey authorized and supported by the State, could do much to prepare the way for a more careful and scientific revision of the state constitution than has yet been undertaken.

ADMINISTRATIVE REORGANIZATION IN IOWA¹

F. E. HORACK

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Apart from the agitation of such questions as the regulation of primary elections, equal suffrage, the initiative and referendum, and the debates on the establishment of the board of control of state institutions in 1898 and the creation of the state board of education in 1909, there has been little or no discussion of the problem of the reorganization of state government in Iowa until very recently. Indeed, a lively interest in the problems of reorganization seems first to have found expression in 1913 in the thirty-fifth general assembly which, besides endorsing the short ballot principle by providing for the appointment of the state superintendent of public instruction, the clerk of the supreme court, and the supreme court reporter, authorized the joint committee on retrenchment and reform to employ "expert accountants and efficiency engineers" and to "institute such changes in the administration of public affairs as will promote the efficiency and economical administration of the affairs of the State in its various departments."

It was in accordance with the legislation of March 17, 1913, that the firm of Quail, Parker & Co. was engaged to assist the joint committee on retrenchment and reform and under the direction and supervision of that committee "to examine and report upon the existing procedures incident to the transaction of the business of the State in the various offices and departments located at the seat of government in the city of Des Moines; and to make recommendations with a view to the betterment thereof." The sum of \$10,000 was appropriated to meet the expenses of the proposed investigations. On Sep-

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

tember 13, 1913, the work of the "expert accountants and efficiency engineers" was terminated under instructions from the Committee, and their final report was submitted under date of December 21, 1913.

From the final report—which fills 241 pages of closely type-written matter—it appears that the efficiency engineers, after making preliminary examinations of all of the offices and departments located at the state capital, proceeded with detailed investigations of the office of governor, the office of the auditor of state, the office of the treasurer of state, the office of the secretary of state, the office of the executive council, the office of the board of control, the office of the board of education, the office of the custodian of public buildings, and the office of the dairy and food commissioner. A report on the department of agriculture was presented on March 25, 1913, and a preliminary report on the heating plant was presented on May 21, 1913. Other detailed investigations were curtailed owing to the lack of sufficient funds to carry on the work.

Besides suggesting more modern methods and recommending numerous economies in the work of the several offices and departments—especially in the executive branch of the government—the efficiency engineers make some far-reaching recommendations relative to "the reorganization of the executive functions" of state government. And they direct attention to the fact that the adoption of what they call their "basic plan of reorganization" would not require the amendment or revision of the state constitution. In other words, the reforms proposed could be brought about through ordinary legislative action.

With respect to the legislative branch of the government the report proposes no organic change, but strongly urges the organization of a well equipped legislative reference bureau in connection with the state library.

The judicial department of the state government was given only a cursory examination by the efficiency engineers, who offer no recommendations in their report but call attention to a plan for the reorganization of the judiciary recently pro-

posed by William R. Vance, dean of the College of Law of the University of Minnesota, in an address delivered on January 15, 1914, before the bar association of South Dakota—which plan they “believe is well worthy of consideration.”

Thus the “basic plan of reorganization” proposed in the report of the efficiency engineers relates primarily to the executive branch of the state government, and calls for no alterations in the state constitution. It recognizes the fundamental principles of (1) the short ballot, (2) the concentration of authority and the location of responsibility, (3) the scientific budget, (4) the merit system, and (5) business efficiency.

In the first place, the plan proposes the union of the offices of the auditor of state and the treasurer of state through the establishment of a new department to be known as the finance department. Similarly the establishment of a new department to be termed the legal department is proposed through the union of the offices of the secretary of state and the attorney general. This union of offices would in fact be simply a union or rearrangement of the functions and duties prescribed by legislation, without affecting the constitutional status of the offices. In addition the plan proposes to create (1) the office of state purchasing agent, (2) an official known as the chief accountant, and (3) a civil service commission or bureau organized to administer the merit system which is to be used in filling all executive and administrative positions except the constitutional offices and the heads of the seven departments.

Under the direction of the auditor of state and the treasurer of state, the new finance department would control the whole accounting of the state government. Moreover, the creation of this new department contemplates the adoption of a scientific method of budget control, a scientific accounting system, and an independent audit and examination of accounts.

The proposed new legal department would be comprised of the offices of the secretary of state and the attorney general and would handle all matters of legal record and justice. In the plan for this new department the secretary of state is “in charge of the executive and legislative records, and the

motor vehicle bureau; while the attorney general will conduct his branch on similar lines to those at present existing."

Having thus outlined the reorganization or redistribution of the functions of what may be called the "general administration offices," the efficiency engineers propose the further rearrangement, classification, or grouping of the executive functions and activities of the state government into the following seven departments:

- I. The Department of Agriculture.
- II. The Department of Commerce and Industries.
- III. The Department of Public Works.
- IV. The Department of Public Safety.
- V. The Department of Public Health.
- VI. The Department of Education.
- VII. The Department of Charities and Corrections.

To one or another of these seven departments all of the existing subdivisions of the executive branch of the government will be assigned. Each department is to be under the immediate control and direction of a director general. The governor shall himself assume the portfolio of director general of the department of public safety. The heads of the other six departments shall be appointed by the governor, but such appointments shall be subject to ratification by the senate.

Moreover, the executive council as now constituted is to be abolished entirely, and a new executive council, consisting of the director generals of the seven departments, is to be created. This new executive council would serve as a kind of executive cabinet and the governor would be its chairman. Thus, it is clear that under the proposed plan of reorganization the governor would be the real head of the state administration.

THE PLAN OF THE COMMITTEE ON RETRENCHMENT AND REFORM

About the middle of November, 1914, the joint committee of the thirty-fifth general assembly on retrenchment and reform submitted a preliminary report, embodying recommendations to the thirty-sixth general assembly based largely on the report

of the efficiency engineers just referred to. This is a brief report of twelve pages, and "a more formal and complete report" is promised at a later date.

In this report the committee sets forth a plan for the reorganization of the executive branch of the state government which contemplates the concentration of authority in one head—the governor of the State. The duties of the constitutional state officers such as the secretary of state, the state treasurer and state auditor would be confined to the narrowest limits possible. That is, the secretary should be merely a recording officer. The auditor should look after the State's accounting and the treasurer should be limited to the handling of the State's revenues. The committee also declares that their plan contemplates the ultimate abolition of these officers through constitutional amendment, thus giving Iowa the short ballot. In this way the governor would be left free to choose the various officials through whom he must carry out his policy.

The plan of the committee contemplates the division of the various departments of the State's activities into three great divisions, each headed by a chief appointed by the governor, and having general supervision over the several departments placed under him.

The three departments contemplated in the plan of the committee are designated as (1) the department of social progress, (2) the department of industries, and (3) the department of public safety. To these three departments all of the existing sub-divisions of the executive branch of the government would be assigned. The three department heads would, moreover, become "the cabinet of the governor and responsive to his policies."

In this way the committee believes that much will be gained in economy and efficiency in the state administration. The committee further declares that every appointee should be subject to removal by the governor for cause, and though they assert that ability and not political affiliation should control appointments, no other suggestion for the establishment of the merit system in civil service is made. Other suggestions

designed to put the State's affairs on a modern business basis, including the adoption of the budget system, changes in legislative procedure, permanent automobile license numbers, a purchasing agent, and other minor administrative changes, are recommended.

The arrangement of departments suggested by the efficiency engineers is open to criticism but in the opinion of the writer it is much superior to the threefold division made by the committee on retrenchment and reform. The educational institutions of the State might as logically have been classed with the fish and game commission, meandered lakes and dairy and food commission as to be classed with the penal and charitable institutions. The same objection may be raised to the incongruous association of the state veterinary department, the railroad commission, the banking department and the inspector of bees all in one department (industries). In like manner the fish and game commission, meandered lakes and capitol extension are classed under the department of public safety.

The committee is at least on the right road to the solution of the problem of the reorganization of state government, and whatever may become of their recommendations or those of the efficiency engineers, Iowa has at least been placed on the firing line of the battle for the reorganization of state government.

THE REORGANIZATION OF STATE GOVERNMENT IN KANSAS¹

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During March of 1913 Governor George H. Hodges of Kansas was the most talked-of and written-about governor in the United States. His message of March 11 to the Kansas legislature was probably the most quoted message of the year. To students of state government this message presented nothing new. It probably would be just as true to say that much of this message presented little that was new to the great majority of intelligent voters. It certainly suggested nothing unfamiliar to most thinking legislators in Kansas. Nevertheless it was a unique message and it merited all the publicity it received. That this should be true is one of the paradoxes of American politics.

For years editors, students, and legislators themselves have been making the same criticism of our American methods of lawmaking that Governor Hodges makes. And from many quarters had come practically the same proposal for reform that the governor advocates. One of our American States had attempted the year before by direct popular action, to adopt a much more thorough going scheme of state reorganization. But we are a conservative people, and for some reason or another, we are but slightly stirred by criticism or suggestion for change in our governmental machinery unless it comes from an official source. Let congress suddenly discover that there is an insidious lobby at Washington and we all demand immediate house cleaning. Let a mayor expose graft in the police department and we clamor for reorganization. And let a governor tell us that the people are not really represented at the capital and we

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

make him our oracle. Until we have just such confirmation of what we have long known, however, we live serenely confident in the excellence of our government, and speak contemptuously of "muckrakers." Perhaps this is as it should be. At any rate, it is.

Mr. Hodges' message may, therefore, become "epoch-making." It is, at least, an important political document. In it the governor says without reservation that our time honored system of lawmaking has broken down and needs a thorough overhauling. He then presents, in outline, a constructive proposal for the reorganization of our legislative department—a small one-house body in which the governor shall have a seat, meeting without restriction as to session and elected for four or six years. Governor Hodges adds "For myself, I can see no reason why this new idea of government by commission should not be adopted for the transaction of the business of the State." Whether used inadvertently or not, for he had referred to the success of commission government in cities in the preceding paragraph, the phrase "commission government for the State" was immediately fastened upon the governor's proposal, in Kansas and out, and it appears upon the program of this meeting.

"The Kansas idea" so-called is sailing under false colors. Much has been said for it and against it in many places because it is clearly misconceived. Advocates of the commission form for cities have sought to prove that it will work wonders in the State as it has in cities. Opponents of the commission plan for cities have found that it will mean bureaucracy in the State. Others have sagely shown that the problem of state government is so different that what has been good for cities may not be good for States. Even the Kansas newspapers confuse the proposal with the city commission. Referring to the message, *The Iola Register*, a stalwart Republican paper edited by Ex-Congressman Charles F. Scott, declared that "the fundamental fault with the commission plan of government for a State is that it combines the legislative and executive powers, and there cannot be found in history a case where such a com-

bination did not result in bad government." The *Lawrence Democrat*² declared that "it combines the executive with the legislative department and bestows altogether too much authority upon a few men." This editor, it might be said, was nevertheless an active advocate of commission government for the city of Lawrence. The *Beloit Call* was opposed to the plan for cities or States since it "establishes a bureaucratic system of government," and the *Syracuse Journal* speaks of the plan as a scheme for abolishing the legislative branch of the government. The *Salina Union* suggests "as a workable compromise" an elective commission to take the place of the present administrative organization, leaving the legislature as it is now organized. It must be very evident that this suggestion is not a compromise at all for it does not touch the matter of the Hodges' plan.

That an orthodox scheme for a state governing commission has been advocated in Kansas is perfectly clear. The *Kansas City Star*, a Missouri paper with a host of Kansas readers, has for several years tried to persuade Kansas that Kansas is the logical State to try out a commission. Eight men should pass the few necessary laws and, with the help of a few department clerks, conduct the administrative business of the State—this is the substance of the *Star's* scheme, and one which it has often referred to as the Hodges' plan.

Mr. Hodges has not always been careful in the use of terms nor in making his argument for legislative reorganization but it is certain that he has refused to be responsible for the *Star's* statement of his case. At the governor's conference in Denver, August 1913, he took occasion to say, "I have not at any time proposed, as I have been credited with doing, commission government for the State. If it is ever attained, I think it must be step by step, and so my proposition is for a small single house legislature as the first step. If it prove a success it will then be time to consider the question of taking another step. What we now want is a legislature in which there will be real

² After the adjournment of the Legislature of 1915 this paper came out in favor of a one-house body.

deliberation and real responsibility." Whether the governor looks forward to a complete reorganization of the state administrative system or not, or whether, if he does, he would wish to merge political and administrative functions to the extent of having elected officers both make laws and be real executives, I have not been able to determine from what he has said or written. He has often quoted from the speech of President Wilson which begins "Elaborate your government; place every officer upon his own little statute; make it necessary for him to be voted for, and you will not have a democratic government." It is a familiar passage to those who have followed the campaign for a shorter ballot. President Wilson, in this address, evidently aimed at our complicated and futile process of electing administrative officers and the resulting irresponsibility. But Governor Hodges uses this short ballot address to bolster his argument for a reduction in the number of our legislators, apparently overlooking the fact that under his proposal the people would still vote for the same number of representatives or perhaps more.

It might be urged that the election of members on a non-partisan ballot and the place of the governor in the system give it the commission character. It should be noted, however, that the alternative of minority representation is provided, so that, after all, this is merely a device for making the body as representative as possible. The giving of *ex-officio* membership in the legislature to the governor does not alter his administrative position at all but is designed to strengthen his political position. We can, therefore, take Mr. Hodges at his word and conclude that the Kansas plan of which we have heard so much is not a commission plan.

To give an adequate account of what is going on in Kansas in the direction of reorganization it is perhaps necessary to give a fuller account of Mr. Hodges' position. The analysis which follows is based upon his plan as it developed in 1913. It was the subject of a good many addresses which he delivered in all parts of the State—addresses illustrated by many examples of ridiculous and meaningless legislation passed while he was a

member of the state senate. The criticism of the existing legislative organization may be summed up under several heads.

1. The two house system is neither efficient nor representative. The people have recognized this in the constitutional restrictions upon legislative action and in the governor's veto.

2. A bicameral body yields readily to the political expert and to the private interests but not to popular control.

3. This organization results in cumbersome and complicated legislation and is responsible for many crude and illy digested laws.

4. The public cannot lay the responsibility for pernicious legislation upon any particular member of the legislature.

5. There is no incentive to the individual to accomplish anything.

6. Sessions are short and most members have no legislative experience. The wonder is that we get anything good.

7. The closing days of the session, with the omnibus roll calls, make for haste and duplication. As evidence on this point Mr. Hodges cites the fact that chapters 177 and 178, and 174 and 175 of the Kansas Laws of 1913 are duplicates. Chapter 75 of the Laws of 1913 was repealed three times. Chapter 318 of these same Laws was immediately amended by chapter 319. Chapter 82 of the Laws of 1911 was repealed by section 7 of chapter 89 of the Laws of 1913 and after being repealed was then amended and again repealed by chapter 198.

8. The check and balance feature of bicameralism has not made for deliberation or guaranteed real representation.

9. The joint committee on revision of the calendar, during the last week of the session, becomes the body which actually dictates what enactments shall comprise one half the laws upon the statute books.

A summary of the constructive features of the plan repeats in part what has already been said but it is here set down in full.

1. A one house body of not more than sixteen members.

2. This body to be elected, two from each congressional district, or one from each district and the other eight at large; or

perhaps nominations should be made by districts and all sixteen elected at large.

3. The ballot should be nonpartisan or provision should be made for minority representation.

4. The governor should be *ex-officio* a member, and the presiding officer of this assembly.

5. It should meet in frequent regular or adjourned sessions as exigency may demand.

6. The term of office should be four or six years with provision for the rotation of terms.

7. The salary paid should justify members in devoting their whole time to the public business.

8. The journal of the proceedings of this body should be published and distributed by the State to every voter.

9. Provision should be made for the recall and for the initiative and referendum.

It appears, then, that the movement for reorganization in Kansas is purely in the direction of legislative efficiency. It is the kind of reform which was proposed at the Ohio constitutional convention, and it has some of the features of the Oregon proposal. Conversely it is radically different from the recommendations made recently in Minnesota and Illinois, and also from the semi-official plans which have been advocated in Oklahoma and Colorado. Whether it will come to anything in the near future is a matter of sheer speculation. During the spring and summer of 1913 many of the leading state newspapers commented favorably upon the governor's message and it received endorsement from a number of local associations such as the Wichita Realty Men's Association.

But that any support for any such proposal may be expected in the next legislature it is idle to predict or to deny. Nothing was heard on the subject in the campaign, the party platforms omitted mention of it—even Mr. Hodges' party, the Democratic, was silent on the subject—and no non-political group has come forward to champion it. Mr. Hodges has declared several times, however, that he has not wanted the question to become a political issue and Kansas has taken him at his word. But it

is probable that a resolution providing for an amendment such as the governor suggested will be introduced. Senator J. W. Howe, a close political friend of Mr. Hodges has already prepared such a resolution. It follows very closely the plan outlined above, a legislature of sixteen, two members from a district, four regular sessions a year, four year terms—one half the members to retire biennially—and provisions for the filling of vacancies by the governor except within sixty days of a regular election. No change is made in administrative organization by this resolution and Mr. Howe makes it very plain that he seeks legislative change only.³

Where are we in this matter in Kansas? I do not know. No one in Kansas does. We have heard almost nothing about reorganization for a year, except in our colleges and high schools where it has been a favorable debate question. I have answered scores of letters touching the subject but they have come from outside of the State. I think it is a safe guess that Kansas will not be the first State to radically revise the present state organization. We have a reputation for being radical in our State but in many ways I think it is quite undeserved. In legislation we have held our own with progressive States and in some directions we have led the van. But in the field of constitutional amendment Kansas has been very conservative. We believe in the fathers, both state and national, and in the good old words republican and democratic spelled without capitals. We are, in the main, pretty well satisfied with our government, and perhaps we have reason to be. Kansas is prosperous and contented—it stands high in per capita wealth and in the number of motor cars owned and operated. This may explain the type of conservatism of which I speak. There may be other explanations. Kansas is still puritan and rejoices in the fact. There are no large cities in the State. There are few, if any, millionaires and there is relatively little abject poverty. The labor problem is not acute. All of these facts may help to account for this conservatism. We do not as

³ This resolution was introduced but it received scant consideration.

yet have municipal home rule,⁴ the initiative and referendum, widows' pensions or industrial insurance—such things as one might expect in what we call progressive States. The recall which was adopted at the recent election was a farce initiated by opponents of popular government. The amendment providing for a modern tax system was recently defeated. There are rumors afloat which means that the direct primary⁵ is to be attacked in the coming legislature.

I do not for a moment wish to imply that Kansas is reactionary—as that word is now being used. I am merely suggesting that Kansas is sufficiently conservative⁶ to wish to see some other States try a reorganized state system first. I hope that I am wrong. I should like to see a thoroughgoing change made in our system of making law and Kansas is for many reasons a good field for such an experiment. Since Kansans are what they are no harm could be done.

I believe that legislative reform should aim in two directions. First of all law making ought to be made a simpler concern and a legislature should be created with that end in view. Modern conditions demand a single relatively smaller body working without the elaborate checks which once seemed necessary. We need to utilize legislative experience. There is nothing gained nowadays in passing memberships around for we can develop political interest in scores of other ways. We need publicity of measures and men and that can only come by making the legislature a forum such as it once was. We must make it attract the men we want to see there.

In the second place the restrictions which our constitutions have gradually heaped upon legislative bodies should be swept away. They should be freed from the task of legislating for purely local needs. They should be allowed a larger freedom in method and procedure. Many of the constitutional guarantees we once thought so necessary can well be dispensed with. Let us not constantly invite the court to legislate. Put the

⁴ Introduced and defeated in the 1915 session.

⁵ This attack on the primary finally failed.

⁶ The legislature of 1915 showed itself extremely conservative.

responsibility for the making of law to fit contemporary conditions upon the legislature, where it belongs. If we shift all responsibility from the shoulders of our representatives we ought not to blame them for finding it out. The way to get responsible legislatures is to make them responsible. Give them time and opportunity to work out our problems unhindered by the ball and chain of a bygone generation. This is the lesson the democracy must learn if it is to cope with the problems of the twentieth century.

ADMINISTRATIVE REORGANIZATION IN MINNESOTA¹

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The governor of Minnesota, Hon. A. O. Eberhart, in his message to the state legislature in 1911, made an exhaustive statement concerning the defective and expensive administrative system of the state, pointing out the lack of adequate centralization, responsibility and coöperation, suggesting a definite plan of reorganization, and making an earnest plea for legislative action; but his plea fell upon deaf ears. Again in 1913 he reargued the case but restricted his suggestions to the reorganization and systematization of only two departments: (1) the department of public domain and (2) the department of agriculture. These departments were not reorganized; instead the House of Representatives appointed a committee on public accounts. This committee made a partial study of the situation and filed a report. Nothing further was done except to introduce more than half a hundred bills dealing with state economy and efficiency, one of which passed, an act providing for an educational commission for investigation purposes.

Perhaps one reason the legislature did not undertake a thoroughgoing reorganization of the administrative machinery of the state government is because the members wanted a scientific, impartial investigation of the whole subject made so that action might be taken only after full knowledge. However, the legislature did not provide for a general committee to study the whole situation but went at it piecemeal by providing for a commission to study a single problem. This method of dealing with the question induced the governor after nearly a year's delay, to

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

take the matter in hand. In October, 1913, on his own responsibility he appointed a commission of 30 public spirited citizens of the state to study the situation and report to him their findings and suggestions for reorganization.

The commission was known as the Efficiency and Economy Commission and consisted of the president of the State Federation of Labor, six bankers, two capitalists, one real estate man, one hotel proprietor, one laundry proprietor, eight lawyers, one political writer, two editors, one clerk of the district court, one member of the State Board of Health, the private secretary to the governor, one member of the Educational Commission, two university professors, one the president of the American Economic Association. The consulting statistician was a university professor and former director of the United States census. Eight of the members have had experience in the state legislature. All sections of the state and all phases of political affiliation were represented. In personnel, ability, training and experience, the commission deserves to rank with a constitutional convention. The members served without pay, bore their own travelling expenses and raised money by private subscription to employ a full-time secretary.

The commission was divided into appropriate committees which held numerous meetings and collected a mass of information. It made two reports, one a preliminary report in May and a final report in November, 1914.¹ Both were adopted unanimously. The preliminary report stated reasons for the reorganization of the state government and the final report proposed a bill in complete form for reorganizing the civil administration of the state. The preliminary report was discussed in the last campaign by candidates for the legislature, by the gubernatorial candidates of the leading political parties and by the newspapers and citizens. The retiring governor will have the satisfaction of reporting the findings of the commission to the incoming legislature which meets in January, 1915. The governor-elect, Hon. W. S. Hammond, has already had an

¹ These printed reports may be secured by addressing Mr. John S. Pardee, secretary, Room 239, State Capitol, St. Paul, Minn.

informal conference with the commission and has pledged himself to reinforce his preelection promises by strongly commending the reports in his first message to the legislature. Altogether the situation seems auspicious for the adoption of the plan recommended by the commission.

The commission finds that the total expenditure of the state in 1900 amounted to something less than \$6,000,000; in 1910, \$11,000,000; and in 1912 a little less than \$15,000,000. This increase is due in part to an extension of state functions, but much is due to the lack of proper organization, coördination and financial methods. The commission did not inquire into the honesty or efficiency of individual officers and employees. It did not look for "graft" but for defects in the system. It finds the administration to be incoherent, with little fixed responsibility to either the governor, the legislature or the people. Lack of coördination is shown by a letter which the state fire marshal recently received which reads as follows:

"Dear Sir: The hotel inspector has ordered me to put in a new floor. One of your deputies has instructed me to tear down the building. Which shall I do first?"

The 75 different administrative units including semi-official associations which the commission designates as a "fringe of government" have a wide diversity of structure, being organized under five different forms: (1) the single individual; (2) paid boards; (3) unpaid boards with a paid secretary; (4) *ex-officio* boards of executive officers whose time is already fully occupied, the governor belonging to 16 such boards; finally (5) semi-private associations. This statement shows a preponderance of the board system. Discussing the board system, the commission says: "Students in political science are all agreed that executive work should be done by individuals and not by boards. The average citizen has come to the same conclusion. The board system tends to delay and inefficiency. It dissipates responsibility. No one knows exactly who is to blame if work is badly done. Boards are necessary for legislative and judicial work; they are useful to give advice; they are not suited to administrative tasks. Moreover, under the

board system the governor has little control over the administration. The board members usually have overlapping terms. Each governor appoints only a minority. Each board is a government by itself."

The commission reported a plan of reorganization that can be accomplished at once by the legislature without going through the tedious process of amending the constitution. It includes three main features: (1) reorganization of the executive service; (2) the merit system in the civil service; and (3) the budget system of appropriating money. These will now be presented analytically in the main and not critically.

I. ORGANIZATION

1. The Civil Administration

The civil administration is vested in the governor, lieutenant-governor, attorney general, treasurer, auditor, secretary of state, board of taxation, board of civil service, board of investment, department of public domain, department of public welfare, department of education, department of labor and commerce and department of agriculture. This includes every part of the civil administration.

2. General Financial Officers and Boards

The general and financial officers and boards besides the constitutional officers include: (1) public examiner, now an independent officer who is placed under the authority of the auditor; (2) board of civil service to consist of three members, not more than two of whom shall be of the same political party; (3) commissioner of civil service under the board of civil service; (4) board of investment which is required by the constitution to consist of the governor, auditor and treasurer; (5) a board of taxation to consist of five members. The big board of investment is abolished.

3. Department of Public Domain

The department of public domain consists of a director and under him the following boards, each under a commissioner: (1) lands and mines, now under the auditor; (2) forestry, which displaces the forestry board, forester, auditor and timber board; (3) game and fish, which displaces the game and fish commission and its executive secretary; (4) highways, which displaces the highway commission and state engineer; (5) drainage and water, which displaces the drainage commission and chief engineer; (6) buildings and purchases, buildings now under board of control and printing now under state printing commission. There is associated with the department a board of public domain, to consist of five members.

4. Department of Public Welfare

The department of public welfare consists of a director and two assistants to take the place of the chairman and the other two members of the present board of control. Under the director are the following institutions, each with a chief executive officer with such title as may be prescribed by law or by the director: (1) bureau of health; now an independent board; (2) state prison; (3) reformatory; (4) training school for boys; (5) home school for girls; (6) hospitals and asylums for the insane; (7) school for feeble minded and colony for epileptics; (8) hospital for indigent, crippled and deformed children; (9) hospital farm for inebriates; (10) sanatorium for consumptives; (11) state public school.

There is associated with the department of public welfare a board of nine members, three of whom are to be designated by the governor as a committee on public health. This general board takes the place of the board of health, the board of visitors and two other minor boards. There is a board of sanatoriums with its own inspector; also a board of parole, consisting of the chief officer of the state prison, the chief officer of the reformatory, one of the assistant directors of the depart-

ment of public welfare and another citizen. There is a soldiers' home under a board of seven members associated with the department for budget purposes only.

5. *Department of Education*

The department of education is placed under a different form from those branches conducting general business or exercising police powers. There are two boards: (1) a board of education consisting of nine members, which displaces the department of public instruction, the normal school board, the high school board and the library commission. Under the board of education is a superintendent of education as its executive officer. The educational system of the state other than the state university is placed under the charge of the board of education, each institution having a chief executive officer with a title prescribed by law or by the board of education. These institutions are: (1) the state normal schools; (2) the school for the deaf; (3) the school for the blind. (2) The other board in the department of education is the board of regents of the university, to consist of 9 members, reduced from 12 by dropping the three *ex-officio* members, namely, the governor, the superintendent of education and the president of the university. Under the board of regents are a president and a comptroller.

The board of education and the board of regents, acting jointly, constitute an educational council which is to act in a coördinating capacity, especially on budgetary matters connected with education. Affiliated with the department of education for budgetary purposes are the state historical society and the state art society.

6. *Department of Labor and Commerce*

The department of labor and commerce is under a director. Under the director are the following bureaus, each under a commissioner: (1) labor; (2) banks; (3) insurance; under the commissioner is a fire marshal, now independent; (4) standards, whose powers are at present exercised (in part), by the food and

dairy commissioner, commissioner of weights and measures, surveyors general and chief oil inspector; (5) grain inspection, under a chief grain inspector and not a commissioner.

Associated with the department of labor and commerce is a board of railroads and warehouses, consisting of three members, which is constituted *ex-officio* the board of commerce. Under the board of railroads and warehouses are two boards of grain appeals, one for Minneapolis and the other for Duluth, each consisting of three members, who are now appointed by the governor. Associated with the bureau of labor is a board of labor consisting of five members which displaces the arbitration and minimum wage boards.

7. Department of Agriculture

The department of agriculture is placed under a director and under him are the following bureaus, each under a commissioner: (1) dairies which displaces the dairy and food commissioner; (2) animal industry, which displaces live stock sanitary board and its chief veterinarian, and stallion registry board; (3) exhibits, which with respect to the state fair displaces the state agricultural society and its secretary; (4) immigration, which displaces the board of immigration and its commissioner; (5) division of plant industry under a chief inspector of plants and not a commissioner, which displaces the state entomologist and state apiarist.

Associated with the department of agriculture is a board of agriculture consisting of six members.

The principles underlying the commission's plan of organization are successfully operating in the administration of the central government of the United States, in many cities and in most great business corporations. At the center of the administration stands the governor. The directors of the different departments constitute a kind of governor's cabinet, being directly responsible to him and indirectly, through him, to the people. This makes for unity in the administration. The directors of the departments introduce the lay element. They

are expected to enjoy the confidence of the governor and they may be transitory, changing every two years. They with the aid of the unpaid boards are policy makers and may be experts but are not required to be such. The commissioners or bureau chiefs, on the other hand, are the permanent element and must be trained experts.

The existing bureaus or divisions in the state administration with their present incumbents so far as needed, are merged into the appropriate departments and will be headed by single individuals and not by executive boards. However, the board principle is retained for certain purposes. The department of education is placed under two executive boards. Each of the four great departments with a director has a board for advisory, sub-legislative and quasi-judicial functions. The directors may call on these boards for advice but the boards have access to all the offices in their respective departments and if they investigate and discover abuses, they recommend methods which tend to keep the work out of ruts and to promote business methods in close touch with the interests of the people. These boards introduce another popular element whose object is to secure coöperation; but they cannot interfere with executive action except as already noted.

II. SELECTION OF OFFICERS AND EMPLOYEES

The following officers in the civil administration will be elected by the voters: governor, lieutenant governor secretary of state, attorney general, auditor, treasurer and members of the board of railroads and warehouses. Each officer serves two years except the auditor, who serves four years and the members of the board of railroads and warehouses, who serve six years, one member being elected biennially. This follows existing constitutional and statutory law.

The following officers will be appointed by the governor with the consent of the senate: the respective directors of the departments of public domain, public welfare, labor and commerce, and agriculture; the respective members of the boards

of civil service, taxation, public domain, public welfare, sanatoriums, soldiers' home, education, regents of the university, labor, agriculture and one member of the board of parole.

The term of each officer except members of boards is two years. Members of boards serve six years, one-third being appointed biennially after first appointment when the governor divides each board into three classes. The governor may remove directors of departments at his discretion but he can remove members of boards only for misconduct or neglect of duty, first giving the member notice of the charges against him and allowing ten days to elapse before making a final decision and giving him an opportunity to be heard. When the removal is made the governor must furnish the member a statement of the reasons therefor and file a copy with the secretary of state.

The other officers and employees come under the merit system. The appointing officers are, in addition to the governor, the four directors of departments, the elected officers, and the two governing boards in the department of education. The other boards have the appointing power over their immediate staff only, such as the board of taxation, civil service and railroads and warehouses. The appointing power must in each case choose from candidates certified to him by the board of civil service and can make changes only on the recommendation of the chief officers under him. This secures unity and prevents appointing officers from overriding a bureau commissioner directly in charge of the work. The term of appointment is indefinite. The qualifications for teachers and research men are determined by the board of regents of the university or the board of education.

Emphasis is placed on the practical character of the examinations. There are three kinds of examinations: (1) open competitive examinations for all routine positions; (2) limited competitive examinations open only to persons, not less than three, to be designated as candidates by the appointing officer; (3) non-competitive examinations, open only to one person designated by the appointing officer. The civil service board may adopt reasonable rules but shall not entertain an application from a person who is not a citizen of the state, unless, (1) it is

reasonably certain that no candidate possessing the required qualifications can be found otherwise, or (2) unless the position requires expert knowledge or high technical qualifications. The board may if it deems it necessary, permit temporary appointments not to exceed four months without examination, but all such appointments and the reasons therefor must be reported to the legislature. Promotions, transfers, removals, reinstatements and demotions are marked out in broad outline with considerable discretion left to the appointing officer and those immediately in charge of the work. But everything must be done publicly and a statement of reasons filed with the civil service board. Even the rules of the civil service board must be reported to the legislature for its approval.

The plan includes the usual provisions relating to penalties for interference with the operation of the merit system.

Under the present law, the governor appoints 207 officers and members of boards besides a multitude of persons such as boiler and oil inspectors and assistants in various departments. Twenty-one of these appointees are heads of departments with salaries, but instead of naming 186 members of unpaid boards as at present, the governor under the new plan will name only 59 members of boards.

The abuses that might result from the great centralization of power in the hands of the governor and his four political directors of departments are prevented by the merit system in the civil service. The examination for the somewhat permanent expert subordinates does not emphasize mere academic qualifications of the candidates but stresses personality, practicality and adaptability which will make for efficiency and economy with a minimum of politics and a maximum of service.

III. THE BUDGET SYSTEM

The budget system, so universally neglected in our States, receives careful attention at the hands of the commission. It calls our present practice nothing but madness and recommends a new law which will do for the finances of the state what the merit system will do for the civil service.

The commission recommends that state expenditures with few exceptions should be made by biennial appropriations of the legislature; continuing appropriations in general are condemned. Perhaps the only exceptions which should be made to the rule of biennial appropriations are: (1) the revenue of the various state land funds assigned for educational purposes; (2) the revenue of trust funds and federal grants; (3) proceeds of "mill taxes;" and (4) the prison revolving fund. The practice of using fees or other revenues connected with the public service to cover expenditure of such service is utterly abolished. All fees must be covered into the treasury and salaries paid from moneys duly appropriated by law.

The commission carefully defines "estimate" and "budget" and prescribes the various stages in the preparation of the budget as follows: (1) each bureau, institution or branch of the service at an early date will submit to the director of the department a detailed estimate of the necessary expenditures for the ensuing biennium, together with information and explanation for each item; (2) the directors or other executive heads of departments make a careful study and revision of estimates; (3) the governor in conference with the chief executive heads makes a final study and revision of the estimates, together with a full statement of all sources of revenue and has the budget printed and laid before the legislature on the first day of its session.

The estimates should contain several parallel columns with the following information: (1) name of item, citation of statutes authorizing the service or fixing particular items such as salaries, etc., appropriations for each year of the current biennium, actual expenditures during the preceding fiscal year, that is, the current year of the biennium, estimates for each year of the coming biennium, explanations of increases, estimated revenue to be obtained in connection with the service; (2) the following expenditures should be carefully distinguished: salaries, permanent improvements and all other expenses.

The commission suggests a reorganization of the legislative committees to conform to the new budget legislation and deli-

cately suggests that the business of the legislature is to limit and not to increase expenditures asked for by the executive and says: "The budget system proposed by the commission thus provides for a thorough study of the needs of the state as a whole and of each branch of the state service by the executive and by the legislature through committees organized systematically for that purpose. It provides the fullest possible information for the legislature as the basis for appropriations. It gives to the legislature absolute control over the broad purposes of expenditure; and while it leaves reasonable flexibility in the details, it makes the executive responsible to the legislature for the proper exercise of discretion with respect to these details. It makes the state's business a single unit."

The commission states:

"These three features are all bound to one another. The full advantage can be gained only from all three together. The reorganization of the executive service will bring about a much better budget system, and will enforce economy on the reorganized administration. The merit system will prevent any possible abuse of centralized power."

IV. EDUCATION COMMISSION

Legislative provision for an educational commission to investigate education in Minnesota has already been mentioned. The law creating the commission recites as its object a study of economy and efficiency with respect to the several branches of public education in the state.

A commission of seven was appointed. It consisted of business men and educators. A professor in the college of education of the state university devoted all his time for a year conducting investigations under the direction of the commission.

1. Organization and Administration of the State School System

A member of the educational commission was also a member of the efficiency and economy commission. The two commissions unite in recommending a form of state administration

which has already been sketched as follows: A department of education with two executive boards, (1) a board of education with a superintendent of education as its executive officer and (2) a board of regents for the state university with a president as its executive officer.

For local school administration the commission recommends: (1) that there be special school districts under their present charters in the large cities, namely, Minneapolis, St. Paul and Duluth; (2) that the territory of each of the smaller cities and villages be organized as independent districts with their own boards which are to be elected by the people and which in turn elect city superintendents; (3) that all the territory in each county outside independent districts be organized as one district under a board of education to consist of three persons elected by the voters of such rural districts. This board is to have full power to conduct the schools and elect a superintendent of education for each county. The commission argues that the plan will put all school districts on an equal basis. The independent districts will elect boards for territory where the population is concentrated, while the common school districts will elect boards in territory where the population is more scattered. The benefits will be more equally shared by all because it would bring the graded and high schools to the rural districts. Under this plan more than 7000 ineffective rural school district boards will be abolished and the rural school problems be handled by county boards in the 85 counties of the state.

2. State Aid to Schools

The income that results from trust funds must by the constitution be apportioned on a *per capita* basis according to number of pupils. The legislature has heretofore limited the appropriation to as many pupils as have attended school at least 40 days in schools that have been maintained for five months during the year. The commission recommends that the minimum should be raised to 100 days in a school kept open seven months in the year.

The school funds derived from taxation are at the disposal of the legislature. The commission recommends that these funds be distributed in such manner to the local schools as will stimulate better support of the schools as shown by local taxation, better maintenance of these schools as shown by teachers' salaries, and better work in these schools as shown by average attendance. This is worked out in a comprehensive and statesmanlike manner for rural schools, graded schools, high schools, industrial and commercial subjects, teachers' training and consolidated schools, especially for transportation of pupils to the latter.

The reports of these two commissions, one on general economy and efficiency in the state and the other on economy and efficiency in education mark an epoch in the administration of Minnesota government. The investigations have been carefully made. Reasons for each proposed step have been set forth in the reports³ at considerable length and proposed legislation is submitted for the consideration of the next legislature.

³ The report of the education commission may be secured by addressing Hon. C. G. Schulz, state superintendent of education, State Capitol, St. Paul, Minn.

REORGANIZATION OF STATE GOVERNMENT IN OREGON¹

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The establishment of the system of *direct* government in Oregon—the initiative and referendum, the direct primary, and the recall of officers—has been followed by several important movements for the reorganization of *representative* government in all three departments.

The centralization of the state administration is involved in one of the earliest, as it is in the latest, of these movements. In 1909 and 1911 W. S. U'Ren and others of the People's Power League published a proposal for the "concentration of responsibility and power for the enforcement of the laws as nearly as practicable in one public servant," as it was expressed, by reducing the number of elective officers to two—the governor and the auditor (besides the three proposed "people's inspectors"), and making most of the other state officers as well as the sheriffs and district attorneys both the appointees and the actual subordinates of the governor. The plan was advocated as the means of securing responsibility for the enforcement of the law, economy in administration, and relief from the burden of the ballot. But the proposal was generally condemned by the press as creating "a monster political machine," a "monarchical" form of government. In view of this opposition and of the fact that the League was at the same time urging radical changes in the legislative department of the state government, the proposal was not submitted to the people.

A feeling, long prevalent, that the governor should have more substantial control over the local peace officers, increased by the

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

governor's enforcement of the ordinary criminal laws of the state in several recent instances by the militia, resulted in an act of 1913 which gives the governor some control over the offices of sheriff, district attorney, and justice of the peace. Moreover, the agitation for "commission government" or "business-manager government" for cities in many parts of the state, and the adoption of "short-ballot" charters by three of the cities, including Portland, have doubtless much to do with the growth of public sentiment in favor of a centralized state administration. At the last session of the legislature a single small board was substituted for the many authorities formerly controlling the state charitable and penal institutions, and the air is now full of demands for the consolidation or elimination of state boards and commissions. The way has been thus paved for a favorable attitude toward a thorough reorganization of the state administration upon the principle of centralization.

To what degree the recent movements for centralized administration in other states are due to the influence of the Oregon proposals of 1909 and 1911, very widely known, is not apparent, but it is certain that these movements in other states are to a considerable extent the occasion of the new movement for centralization now in progress in Oregon. The movements in New York and Minnesota have received favorable consideration from the leading newspapers of the state.

Proposals submitted this month to a state conference at the University of Oregon, influenced especially by the recommendations of the Minnesota Efficiency and Economy Commission, included the reduction of the number of elective state offices to the three made elective by the constitution—governor, secretary of state, and state treasurer—the subordination of the whole administration, except the latter two constitutional offices, to the control of the governor, the reorganization of the various offices, boards, and commissions into departments and bureaus, the substitution of single commissioners, or single commissioners with advisory boards, very largely for administrative boards, and the application of the principle of centralized responsibility throughout the administration.

Although this movement is strictly in line with the "economy" which was practically the only issue of the last election campaign, it is impossible to make any predictions as to the action of the legislature in the matter at the next session in January.

A plan for a closer connection between the executive and legislative departments of the state government, suggested in 1909 and later modified, was submitted to the voters in 1912 as one provision in a constitutional amendment initiated by the People's Power League. This provided that the governor should be *ex-officio* a member of the legislature, with the rights of members generally and with the exclusive right to introduce appropriation measures (subject to no increase without the governor's consent) except such measures referred by the legislature to the people; that the governor's veto power should be abolished; and that the governor should be subjected to question by the members of the legislature on matters of administration.

The most of the opposition to this provision was based upon the sanctity of the doctrine of the separation of powers, and particularly it was objected that by such control over the budget the governor would "supersede" the legislature in the matter of appropriations. The measure contained so many other provisions that it is impossible to say how far this provision contributed to its defeat. There is no active movement in this direction at present, and apparently any further development of the governor's responsibility for legislation is to come, for some time at least, through the operation of convention rather than from enactment of law.

Radical reorganization of the legislature has several times been attempted, but all such attempts have failed.

As early as 1908 a constitutional amendment made it possible to provide for "proportional" representation by statute, and the presidential primary law of 1910 provided for minority representation through the "single untransferable vote." But constitutional amendments, containing, with many other provisions, provision for the election of the members of the legislature by the "single untransferable vote," submitted by the People's Power League in 1910 and 1912 respectively, and an

amendment submitted by the League and several other organizations in 1914, containing such a provision alone for the election of the house of representatives (it was doubtless expected that the senate would be abolished by the adoption of another amendment) were all defeated, the last by a vote of 39,740 to 137,116.

All three proposals for minority representation leave the district system (single or multiple) of nomination of candidates for the legislature undisturbed, but provide for their election in the state at large. The proposal of 1910 requires the apportionment of offices among the parties and candidates after the manner prevailing in Switzerland. By the proposal of 1912 candidates receiving the plurality vote in each district are elected, but each member is made the "proxy" of all the electors voting for him, and each defeated candidate for governor, sitting as an *ex-officio* member of the legislature, is made the "proxy" of all electors voting for the unsuccessful candidate of his party for representative. The proposal of 1914 simply provides that the sixty (the number of members) candidates for representative receiving the highest number of votes throughout the state shall be elected.

The usual arguments for and against the principle of proportional representation were urged in the several campaigns. Its advocates summed up its merits in the promise that it would "make the legislature as progressive as the people of the state, and . . . greatly reduce the necessity for constant use of the initiative and referendum." The objections most urged against it were the abolition of the district system, the "destruction of majority rule," and the "disfranchisement" of the voters through the single vote.

The abolition of the state senate has been attempted twice. In 1912 the proposal was submitted by the People's Power League to the people as a part of a constitutional amendment containing many other provisions; and hence the defeat of the measure was no index to the public opinion on the subject of minority representation. But the proposition was submitted alone in 1914 by the League and other organizations, and was defeated by a vote of 62,376 to 123,429.

The general prevalence of the bicameral system is regarded by its opponents in Oregon as due to no inherent excellence of the system, but rather to slavish imitation of the British Parliament; and they point out that Parliament has practically lost its bicameral character since the House of Lords has been shorn of all substantial power. The satisfactory operation of the legislatures of the Swiss cantons and the Canadian provinces is cited in justification of the unicameral system against the evidence of its unsatisfactory operation elsewhere under ancient and extraordinary conditions. The constitutional restrictions imposed upon state legislation, the governor's veto, and the referendum seem sufficient check against abuses of power without the obstruction which results from the division of the legislature into two branches. The division further results, it is maintained, not in securing due deliberation of legislation, but in "log-rolling" between the two houses, and in the shifting of responsibility from one house to the other. The expense of a second chamber is another reason urged for its abolition.

Although the smaller size of the senate and the longer terms and more extensive experience of its members make it a more efficient instrument of legislation than the house of representatives, a tendency to class an upper house with the aristocratic House of Lords and the heretofore indirectly elected United States Senate, and resentment against the action of the Oregon senate in defeating certain measures of proposed legislation have resulted in the selection of the senate rather than the house for elimination.

At the session of the legislature of 1913 the proposal of a constitutional amendment to establish "a state commission form of government" was made, but it received only three votes, and this plan has so far awakened no considerable interest in Oregon.

The proposed constitutional amendments of 1910 and 1912 providing for the increase of the executive power in legislation, for proportional representation, and the abolition of the senate, contained various other proposals for the reorganization of the legislative assembly, including annual sessions, extension of

term, increase of compensation, safeguards against log-rolling, extension of the recall to the legislature as a body, and the requirement that the presiding officers be deprived of all but judicial functions, and be chosen outside the membership of the legislature. Other amendments for the extension of the term of the legislative session and the increase of the compensation of members were defeated by the voters in 1912 and 1914. In the legislature of 1913 there was serious consideration of a proposal, advocated for some years in Oregon, for a "divided session" of the legislature, similar to that now established in California.

Some of the radicals have developed such a regard for direct legislation and such an hostility to the legislature that they are more interested in the actual abolition of the legislature than in its reform, and serious proposals of abolition are occasionally made.

At the election of 1910 the voters entirely replaced the article of the state constitution pertaining to the judicial department of the government. The brief new article permits the organization and regulation of the department largely by statutory law. In the words of its authors, the People's Power League, the purpose of the amendment is "to remove restrictions on the power of the people to make a law for any kind of court they want; to allow the people and the legislature to transfer to the circuit court the law and probate business of the county judge in counties where that can be done to good advantage; to simplify procedure on appeals to the supreme court and remove the pretext for new trials in those cases in which substantial justice is done by the verdict and judgment, but in which the trial court may have made a technical mistake; or if the verdict is just and the judgment is not, to make it the duty of the supreme court to enter the proper judgment, if that can be done, instead of sending the case back for a new trial; to allow the supreme court to take original jurisdiction in important cases of habeas corpus, mandamus, and quo warranto; . . . to prevent mistrials and hung juries, by allowing three-fourths of a jury to render a verdict in civil cases; . . . [to remove] the con-

stitutional restrictions on the power of the people and the legislature over the offices of county clerk, the sheriff, the county judge, and the district attorney."

An act of 1913 increases the number of justices of the supreme court to seven, and authorizes the court to sit in departments as well as in bank. A resolution proposing a constitutional amendment to allow the "recall of judicial decisions" was indefinitely postponed in the house of representatives in 1913. Since in Oregon constitutional amendments can be enacted by direct legislation as easily as statute law, nothing substantial would have been accomplished by such an amendment. For several years there has been a strong movement in favor of a "non-partisan" judiciary, but a bill with this purpose in view was defeated last month at the general election.

THE REORGANIZATION OF STATE GOVERNMENT¹

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The oft quoted remark of James Bryce concerning the government of American cities was certainly justified insofar as it condemned our American city government. To the extent, however, that it seemed to imply a recognition of the successful operation of our state governments it would appear to be in need of considerable limitation. Indeed there is evidence to show that the defects of our state organization made themselves pretty generally felt even before the evils of our city administration were recognized, and constitutional changes looking toward remedying those defects were undertaken before any serious attention was given to the consideration of municipal problems.

On the other hand, it is true that once the evils in our American municipal system were recognized a more comprehensive, wide-spread, and successful campaign has been waged against them than has even been inaugurated against the manifest defects in our state governments. It is no exaggeration to say that today there are immeasurably more persons seriously and actively engaged in the cause of good city government than there are persons interested in the same effective way in improving our state governmental machinery. There are, of course, several good reasons why one would expect this to be the case, but our prime interest is sufficiently served by pointing out the fact without going into an examination of the explanation.

Now in undertaking a suggestion for the reorganization of state governments in this country, the simplest and most satisfactory way would seem to be to take the main features of those

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

governments and examine into their nature and operation and see if that does not lead to a promising solution of the difficulties presented.

Right here in deciding on the method of approaching this problem, I believe, we can learn a helpful lesson from the progress of municipal reform to which I alluded above. During the latter part of the last century, after the cause of municipal reform began to make some headway, it was characteristic of the *modus operandi* of the reformers to seek a solution by the tacking on to what they considered the fundamental hypothesis of American government all sorts of devices for remedying the evil conditions noted in our American cities. This supposedly fundamental hypothesis was namely the separation of legislative and executive powers, and all municipal reform programs until the beginning of the present century took that as a starting point, and made, it must be admitted, but very slow progress. Now I believe that that working hypothesis, so long accepted as axiomatic, was fundamentally wrong, certainly as applied to city government, and that rapid progress in municipal reform could not be expected until in some manner the child-like belief in the sacredness of the doctrine of the separation of governmental powers was shaken. Be that belief right or wrong, it is a fact, acknowledged I believe by all students of American city government, that with the advent of commission government which struck at the very foundation of this deep-rooted conviction there dawned an era of municipal awakening and improvement throughout this country which far outdistanced any equal era in our history, and indeed, in my opinion, the whole of our prior American municipal development.

Let us, therefore, in approaching this important problem of reorganizing our state governments not be afraid to cast aside any outworn garments no matter how much we may hate to part with them for sentimental reasons. It may be that the defects of our state governments may be found to be attributable in part at least to the acceptance of unworkable working hypotheses in the very foundation of our state system.

In the first place then we see as virtually universal features

of our state governments, a bicameral legislature elected for a definite term of a few years, by practically universal manhood or adult male suffrage, an independently elected executive with a suspensive veto and certain other legislative powers, but little real executive and administrative power, a number of independent elective administrative authorities, and a system of courts appointed or elected for relatively short terms and with the political power of declaring legislative acts invalid on the ground of conflict with the state constitutions. These seem to me to be the characteristic essential features of our system of state government, and therefore those that should be subjected to a critical scrutiny. It is true, of course, that most of these features are dear to the hearts of the American people and that proposals to tamper with them, or at least with some of them would be regarded by many people as revolutionary to say the least, certainly as undemocratic, and probably as treasonable. But I take it we need not be concerned here with unthinking criticisms such as these, bearing in mind of course that even a theoretically perfect scheme would to be practicable have to exclude features which would certainly never even in the process of education prove acceptable to a majority of the electors. To illustrate, it might or might not be considered advisable to restrict the suffrage in certain ways, but as a practical proposition the suffrage once extended to a certain class can virtually never thereafter again be withdrawn. Both history and reason point to the general soundness of that proposition. I should, therefore, not want to spend time discussing the merits of suffrage restrictions based on property or social or economic statutes. But a minimum requirement of a literacy test for voting would seem with the spread of popular education to be both a desirable and an attainable goal.

Let us examine now with a critical eye our legislatures and see what is wrong with them. The commonest criticisms directed at them and at their members are that they are ignorant, unresponsive to public opinion, and in many cases corrupt, in other words, individually and collectively incompetent. It may be helpful to range alongside these popular epithets the gov-

ernmental facts that they are untrained, ill paid, individually and collectively comparatively powerless, and under the domination of the political machine that is responsible for their election. If the latter facts can fairly be considered as causes of the former characteristics we may have made some progress in the matter of diagnosis, which of course is the first and absolutely essential step in the treatment of an ill, in matters governmental as well as physical.

Now if legislators are untrained it is because our educational system is at fault. There are not I venture to say, enough men in the whole of the United States really trained in public affairs to fill the legislative halls of our several States. That is a condition which it will take years to remedy and the only immediate steps to be recommended are the lengthening of the legislative term of service to enable men of ability to get their training in the legislature and to remain there long enough to use it, and on the other hand to provide proper agencies for giving our law-makers at the capitol the information without which they cannot even consider the intricate questions that come up. I am speaking here of the valuable statistical and comparative information that professional, non-political, and permanent department under-secretaries could furnish, and which at the present time some of our legislative reference bureaus are attempting to supply.

The matter of underpayment is of course theoretically simple to remedy, though the experience of Texas at the last election where a proposition to pay legislators a salary instead of an inadequate per diem was decisively defeated may be cited to show that there are practical difficulties in the way. As the explanation given for the defeat of that constitutional amendment seems to have been, however, a general feeling that the legislature was not even now "delivering the goods" and therefore deserved no more than it was getting, perhaps we may hope that if we can in other ways provide a legislature that will deliver the goods the matter of adequate remuneration will not be difficult of adjustment.

The most serious impediment to a right kind of legislature

and a proper kind of legislators seems to me to lie in the fact that they are individually and collectively powerless. It is, I believe, now generally admitted that the attempt to cure the evils found in our state legislatures by depriving them of powers and by limiting their term and remuneration are doomed to failure. Indeed it is the very impotence of our legislatures which militates against improvement. The individual impotence of legislators is due to the size of the legislature, to its bicameral nature, and to the control by the political machine, of which I shall speak in a moment. The collective impotence of the legislature, and this increases also of course the individual impotence of its members, is due on the one hand to the legislative power of the governor, including his power to recommend legislation, to call extra sessions, his veto power, and last but not least in his tacit power to refuse to enforce the measures of the legislature even when passed over his veto, and on the other hand to the power of the courts to declare laws invalid as contrary to the state constitution. Of this matter more will be said a little farther on.

The reduction in size of the legislature presents no very serious problem. The guiding principle in determining the size of a legislative body should be to make it large enough to be fairly representative, and yet small enough to be really a deliberative body. The exact limits need not concern us here though I feel safe in saying that almost without exception our state legislatures are by far too large to fulfill the latter requirement. The desirability of abandoning the bicameral principle seems to me to be as self evident as the need of a reduction in the total membership, but I realize that not only is the bicameral principle firmly entrenched in the minds of the American public, but even a very respectable array of publicists in this country and abroad are committed to the same. Nevertheless, my own opinion, based both on abstract reasoning and on observation of our state legislatures at work leads me to believe that there is bound to be much more lost through inevitable delay, friction, working at cross purposes and shifting of responsibility, than can be gained by a check on hasty legislation. In other

words in the state as in the city, the bicameral system has actually worked out to prevent the passage of desired and worthy legislation rather than to hold up improper laws. Practically all students of municipal government unite in condemning the bicameral system for cities, no matter how large, and I am unable to discover any reason why it should be considered any better in our state government, in view of the way in which it has actually worked out.

The domination of the political machine is undoubtedly one of the chief reasons for the ineffectiveness of the average legislator even when he does not owe his election to the support of the machine. It is also perhaps the one most difficult of elimination. Most important measures that arise in our legislatures, and many unimportant ones, are made party issues whether or not there has been any expression of opinion by the voters of that party on those points either through the platform or otherwise. Even the independently elected member therefore must secure the support of the majority leaders for any measure he desires to enact, as the individual legislators are governed by the orders of such leaders. It seems clear to me that the chief evil in this party domination arises from the fact that the control is exercised by an organization that is concerned principally with other issues than real state issues, namely, national politics. As long as voters continue to be as they still are for the most part now adherents of the same political party in state politics as they are in national politics, so long also will the subordination of state interests to the seeming demands of national party expediency continue. The only hope in this matter would seem to lie in the adoption of the principle of proportional representation for our states, which would enable a voter to cast an effective vote with a minority party and so permit him to vote against one of the existing national parties without voting for the other, or one of the others as the case may be. The introduction of the principle of proportional representation would have another very important result in making the members of the legislature more responsive to popular opinion. If a plan of having a few large

election districts with five or ten members returned from each by a system of proportional representation were adopted, it would relieve the pressure now brought to bear on representatives in this country, equally, in city, state and nation, to represent primarily their ward or district instead of the larger unit as a whole. The lines of cleavage would then be horizontal, cutting across district boundaries, rather than determined by those boundaries and the petty local interests of the geographical divisions would tend to be subordinated to the welfare of the party or group of voters throughout the state as a whole whose interests were in the hands of representatives from all the different districts. There is neither time nor occasion here to go into an exhaustive discussion of the merits and defects of the principle of proportional representation, but it would seem to have a direct bearing on the question of making the representative more independent and more conscious of his real responsibility.

When now we seek to increase the collective power and responsibility of the legislature, we strike immediately at what are considered the most fundamental characteristics of the American governmental system, namely, the separation of powers, and the power of the courts to declare legislative acts void. That the veto power given to the governor is both actually and potentially a very powerful political weapon of control over the legislative body is admitted, but it is difficult if not impossible to show that it has worked out for good or is likely to do so. If the executive and the legislature are politically in accord the veto is superfluous, if they are not in accord it is a certain means of producing deadlocks and of halting all progress. But the taking away of the constitutional veto is but half a measure if the executive is to cease to exercise control over the effectiveness of legislative action. His power to defeat the legislative will by failing to execute that will is an equally important and much more dangerous factor. That power, however, can be taken from him only if he ceases to be independent of the legislature, and he will continue to be independent as long as he is elected by popular

vote. We are brought to the conclusion therefore that the executive as an independent factor in our state governments should cease to exist, and that leads us to take up the question of the organization of the executive and administrative authorities in our reorganized state government.

If the executive is not to be independent of the legislature we are obliged to make his appointment and control rest in the hands of the legislature and so we are led to the adoption of the cabinet form of government for our states. The real executive then should be the chief minister, acting with a cabinet consisting of the political department heads. Whether he should be called governor and appear also as the titular head of the government, or whether there should be another person chosen to fulfil that function, as in France, seems to me a matter of secondary importance. The important thing is that ultimately all political power should rest in the hands of a truly representative legislative body. The organization of the administrative departments would then resolve itself into the securing of permanent, expert non-political secretaries, under the direction of the various ministers. It is understood of course that a satisfactory system of civil service merit rules would be a necessary part of this or any other plan of administration. A business manager's department to look after the physical property of the state would be a desirable feature, but this and other details of administrative organization cannot be gone into in a discussion of general principles such as this.

I stated earlier in my paper that the collective impotence of the legislature is due in part to the power of the courts to declare their acts invalid. As a consideration of the nature of this power will I believe lead us to advocate the termination of that power not only in order to favor the legislature's position but to improve the position of the courts themselves, it logically belongs here with the consideration of the way in which that branch of the government should be constituted.

It used to be a favorite question for debate in times past whether this power of the courts to invalidate legislative acts was in violation of the doctrine of the separation of powers

and destructive of the independence of the legislature. With the first of these propositions I am not concerned as I am done with the separatist doctrine as a general working hypothesis. But that this power in the courts does affect the independence of the legislature to a considerable extent seems to me too clear for argument and that to take away this power from the courts and leave the final determination of constitutionality to the legislature itself would increase enormously the responsibility and power of the legislature is equally self-evident. If then we agreed that our legislatures are suffering from too limited powers the proposal to transfer the constitution interpreting power from the courts to the legislature would from that point of view be a wise move.

But even more important in my opinion than the effect on the legislature that would follow from such a reorganization would be the effect on the courts themselves. In spite of oft repeated assertions to the contrary, usually by members or defenders of our judiciary, the power to interpret the constitution and apply it to the nullification of laws is in its nature a political power, and has indeed in well-known instances been used even for partisan purposes. It is unquestionably legislation and inevitably leads to the balancing of the court's economic and sociological opinions over against those of the legislature. Now nothing can be clearer than that the electorate will not with its awakening interest continue to permit such considerable political power to be lodged in the hands of an organ not directly or indirectly under the control of the voters. They will insist therefore not only on electing the judges for relatively short terms, but also on exerting an influence on their decisions. The movement for the recall of judges and review of judicial decisions is the direct and logical consequence of the realization on the part of the electorate that the judges in possessing this power of legislative control are a part of the policy determining or political branch of the government. That a judiciary which is in politics is in a hopeless situation needs no proof, and instead of trying to control this political power by providing for recall and popular review, the power

should be wholly taken away and so remove at once the judiciary from the arena of politics. Once the judiciary is shorn of this embarrassing prerogative it should not be difficult to provide that they be selected by the minister of justice to serve during good behavior at an adequate salary to attract the very best of the legal talent in the state.

Thus we are led from a simple contemplation of the weaknesses of our state legislatures to a thoroughgoing revision of the other two branches of the state government. These are the important matters to be taken under consideration for on the manner of their determination will depend the fundamental nature of the government to be provided for our states. There are many other matters which would need attention if an actual constitution were to be written, such as the relation of the state to its subdivisions which presents many disputed points, but those matters cannot be taken up here. There are also many proposals for reform which I should support that fall far short of the fundamental reorganization herein suggested such for instance as the reformation of the state administrative service. But if I am asked why I propose such far reaching alterations I would reply that such other measures though highly desirable would from a larger point of view be only more or less temporary makeshifts, and that sooner or later with the growing complexity of governmental problems and the growing demand for their intelligent and effective solution nothing short of fundamental recasting of our state political forms will accomplish the desired ends.

THE EXECUTIVE COUNCIL, WITH SPECIAL REFERENCE TO MASSACHUSETTS¹

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The Massachusetts constitution of 1780 provided that there should be a council "for advising the governor in the executive part of the government." The governor was authorized to convene the council at any time at his discretion "for the ordering and directing the affairs of the commonwealth." Without the advice and consent of the council, the governor was declared to be incapable of exercising any of his powers of convoking, adjourning, or proroguing the legislature, of making appointments to office, of pardoning criminals, or of authorizing by warrant the expenditure of public moneys. The governor was not made dependent upon the advice and consent of his council in exercise of his legislative powers. He might at discretion recommend measures to the legislature and veto legislative enactments, but no executive authority whatsoever was entrusted to him alone, to be exercised without his council's advice and consent, except the command of the armed forces of the commonwealth. In short, the governor, though declared to be the supreme executive magistrate of the commonwealth, without the consent of his council was impotent in the conduct of state administration.

In the beginning the Massachusetts council was chosen by the legislature, and constituted one of the chief agencies relied upon by the revolutionary "fathers" to protect the people against the menace of executive usurpation and tyranny. Similar bulwarks of liberty were established in most of the other states. In Pennsylvania, indeed, so jealous were the revolutionary

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

statesmen of executive power, that they created a council which was itself the chief executive of the state. There was no governor, and the president of the council had no more power than any of his associates. Eventually, however, most of the states which had originally established executive councils abolished them, transferring the power to "advise and consent" to executive appointments to the state senates, and leaving the governors to exercise their other executive powers unchecked by any other executive body. In only three states, Maine, New Hampshire and Massachusetts, has the original executive council survived.

In Massachusetts the position of the council was materially altered by a constitutional amendment adopted in 1855. Its members were made elective directly by the people, and thereby rendered independent of the legislature with respect to the exercise of their powers. Consequently in Massachusetts today the governor has a much stronger position for dealing with the legislature than in most states, where the senates can make their consent to appointments contingent upon executive subservience in legislative affairs. The Massachusetts chief executive, therefore, can be a more effective leader, both in his own party and in the conduct of affairs of state, than in the other states, other things being equal. Although the council is not able to exercise much influence upon the governor in his relations with the legislature, its executive authority is limited only by the limits of the authority of the governor. If the governor were in fact, as he is in name, the "chief executive magistrate of the commonwealth," the importance of the council would be very great.

It is interesting to consider what the authority of the governor and council would be, if the constitution were observed to the letter. The fundamental law prescribes that "all orders and directions" necessary and proper for the management of the affairs of the commonwealth shall be made and issued by the governor and council. This would seem to require that administrative rules and regulations of every kind, as well as special orders and directions not couched in the general form of a rule

or regulation, should be issued by the governor and council. For example, when the legislature provides that only pure food and drugs shall be offered for sale in the commonwealth, it would seem to be the constitutional duty of the governor and council to establish standards of purity, and provide by executive order for their enforcement by the officers of the law. When the legislature provides that mill machinery shall be made reasonably safe, that adequate protection shall be provided against noxious fumes and dust, or that due care shall be taken by factory-owners of the lives and health of their employees, it would seem to be the constitutional duty of the governor and council to frame regulations to interpret and give practical effect to such general expressions as "reasonably safe," "adequate protection," and "due care." So in the matter of the regulation of public service corporations, the governor and council should be charged with the responsibility for the elaboration of the rules by which the reasonableness of rates or the adequacy of service may be determined. Had the Massachusetts constitution been literally obeyed, we might have developed a splendid *Conseil d'Etat*, composed of a few chief councillors elected by the people, and a larger number of appointed members, each chosen for exceptional proficiency in a special field of administration, and altogether forming such a body of experts as can be found today nowhere in this country in the service of a state government. Such an executive council would have been a priceless heritage.

It is possible to conceive a different development. Since the growth of party spirit and the development of powerful party organizations in the states, many of the original relationships among the organs of government have been profoundly altered. The chief executive magistrate in particular has become in the eyes of the people more and more the official spokesman for his party, and therefor the chief legislator of the state, so far as partisan legislation is concerned. The governor might conceivably have treated his councillors, or at least those of the same party faith, as the official council of his party, used them as his personal representatives before the legislature, and made of

them the instruments of an effective executive leadership in legislative affairs. It may be conceded that the difficulties in the way of such a development would have been great, since the councillors are elected by districts and are responsible to no one but the people of their respective districts. Yet the attempt might conceivably have been made.

In fact neither of these developments has come to pass. The social and industrial legislation of the last half century has tended always to establish quasi-coördinate executive boards and commissions for the elaboration of administrative regulations of the kind the English would call statutory rules and orders. Or else it has filled the statute books themselves with the very administrative orders and directions for the purpose of advising and consenting to which the council was originally created. In either event the effect has been the same. The governor has been stripped of most of the powers necessary and proper for a chief executive magistrate, and has been reduced to the position of a sort of official public agitator, whose chief function is to bully the legislature into the enactment of the laws required to fulfill his campaign pledges.

The executive council has shared in the degradation of the governor. Occasionally, when the majority of the council are of the opposite party to the governor, it plays politics with his appointments. It makes a poor board of pardons, and the legislature has thought it wise to create a special board of pardon and parole, appointed by the governor. It makes a fair board for the auditing of the governor's contingent fund. Otherwise it cuts no important figure. The real executives of the state are the attorney-general, the dozens of administrative boards and commissions, and the courts.

The Massachusetts councillors are usually men of ability and character. The truth is, however, that they are attracted to the council less by the importance of their official work than by the dignity of their official idleness. They could be dispensed with at any time, and they would scarcely be missed. But the work that they might have done, or had a hand in doing, had the constitutional development of the state taken a differ-

ent turn, has not yet been undertaken, or if undertaken, has not always fallen into the right hands. There is a genuine need for a real executive council, a council which shall help to centralize the responsibility for the conduct of state administration in the hands of a real chief executive magistrate, and which shall help to strengthen him in his relations with the legislature.

LEGISLATIVE NOTES AND REVIEWS

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Direct Primaries. At the beginning of the 1915 legislative sessions there were only ten States which did not have a direct primary, and of these States, three had partial systems and two nominated by direct vote under the rules of the dominant parties.

Three hundred and ninety-seven members of the present house of representatives out of four hundred and thirty-five were nominated by direct primaries; in thirty-seven States provisions had been made for the nomination of United States senators by direct vote; thirty-eight of forty-eight governors and other state officers in forty States were nominated by the people in direct primaries; and in forty States local officials were nominated in like manner.

Party organizations were formed in twenty-two States and presidential primaries either for the election of delegates or the expression of preference were provided for in more than twenty States.

At this writing, the States of Indiana, North Carolina, Vermont and West Virginia have enacted comprehensive measures thus leaving only six States without a direct primary law and of these, South Carolina and Tennessee have the direct primary under the rules of the dominant party. The former regulates primaries by law. Tennessee had a primary law but it was declared unconstitutional. The only States which do not have any form of direct primary under law or party rules are, Rhode Island, Connecticut, New Mexico and Utah. The two latter, however, have a primary in cities under commission government. Wisconsin seems likely to repeal the second choice provision.

The seeming political reaction of 1914 led many politicians to originate plans to restore the Convention or at least some of its elements. The friends of the direct primary, recognizing some of its defects, proposed changes to eliminate them. The result of the activity of these two elements was that new legislation was proposed in many States.

The governors' messages reflect the agitation but the recommendations of all of the governors are favorable. Not one suggests the

impairment of the plan. Governor Hammond of Minnesota recommended the open primary because he recognized that the closed primary had not secured its object in his State; Governor Ferris of Michigan favored a preferential ballot with first and second choices; Governor Kendrick of Wyoming recommended a simpler method of getting names on the ballot; Governor Morehead of Nebraska favored a method of party committee designation of candidates similar to the Richards law in South Dakota; and Governor Capper of Kansas recommended a presidential preference primary and a fee system for getting on the ballot. Governors McDonald of New Mexico, Ralston of Indiana, Hooper of Tennessee, Craig of North Carolina, Hatfield of West Virginia, Fletcher of Vermont, all recommended the passage of a State wide law.

From the opponents of direct primaries in many States came proposals for some sort of pre-primary convention which would point out the way of wisdom for the party voters. The most active efforts in this direction were found in Michigan, New Hampshire, Kentucky, Washington, and New York, while the idea was advanced in several States, and was enacted into law in Washington.

The Michigan plan provides that State conventions of the different political parties shall be held for the purpose of placing in nomination, candidates for office; that such convention shall take only one ballot upon candidates for each office to be filled at the ensuing primary election and any candidate who receives 25 per cent of the votes of the duly accredited delegates to such convention for any office, shall be certified and have his name placed on the official ballot.

In New York, according to bills introduced in both the senate and house, designations will be made by party committees or by petition instead of by petition only, as in the present law, and such designations may be made upon the recommendation of a state convention in the case of state officers. The bills provide for the election of delegates by assembly districts, the number to be determined by party rules. Substantially the same proposal was made in other States.

The pre-primary convention was tried out somewhat, prior to the primaries in 1914. In Wisconsin a convention of the conservative Republicans endorsed E. L. Philipp for the nomination. In Oklahoma also, the Republicans held a pre-primary convention in 1914. This was a regular old-time convention held in conformity

with a call issued by the State committee. In this case the ticket made by the convention was nominated without opposition by the Republican voters at the primary, but the Republican party is in the minority in Oklahoma and it is doubtful whether things would have run as smoothly had there been any considerable hope of electing the ticket. Unsuccessful attempts were made in South Dakota this year to repeal the Richards Primary Law which was initiated and adopted by the people in 1912. This act provides for two proposal committees—one a majority and the other a minority committee. The act thus presupposes the existence of factions within each party and each faction is supposed to elect a proposal committeeman in every county. For the proposal of candidates for state offices, both committees meet at the state capitol, adopt a platform, and propose candidates for different offices. The same thing is done in each county. The ballot has one column for candidates of the majority faction, one for candidates of the minority faction, and one for independent candidates.

The act is reported to be very unpopular because it invites factionalism and because of the advantage which it gives the majority designations. All but one of the candidates on the majority slate at the last primary were nominated, Senator Charles H. Burke, being the only exception.

The new acts passed present little that is new in primary legislation. The Indiana law provides for a second choice ballot according to the Wisconsin plan. It also provides for a preferential vote for president, vice-president, governor and United States senator, but it is stated that if any person receives a majority of the votes cast, the nomination shall be binding without convention action. Inasmuch as the second choice is provided, it is probable that a majority would be secured in most cases, hence the act is preferential in name only. The state convention is provided for the nomination of other state officers but the direct primary applies to all other elective officers. Party committees are chosen at the same primary by direct vote. A fee is charged for places on the ballot.

The only distinctly new proposal in the Vermont act is that the members of the state committee shall be chosen by the party nominees when they assemble for the purpose of making a state platform. The party nominees in each county nominate the candidates from their respective counties and the state convention elects. The Vermont act is subject to a referendum at the spring election in 1916 as to the time of taking effect.

The North Carolina act applies to all elective officers. Registration is required for voting. This is not the case in Indiana but is provided for in Vermont and West Virginia. There is a preferential vote for president and vice-president; requirements for itemized expenses before and after election; and a fee system for getting names on the ballot. Certain counties are excepted, on county officers and representatives in congress, from the provisions of the act, but upon petition, the matter may be presented to the voters and if approved, nominations within the counties for county officers and representatives in congress are to be made according to the law.

In all cases, except in Vermont, the new laws provide for a closed primary. In Indiana the voter if challenged must swear that he voted for a majority of the party's ticket at the last election and also that he intends to support the ticket nominated at the primary. The West Virginia act goes further and requires every voter upon voting to swear that he is a member of the party.

In other respects, the primary election laws of the year follow the universal outlines found in the laws of the other States.

Lobbying—Registration. Numerous laws have been passed in the last ten years regulating the legislative lobby. Most of these acts have required registration either of the lobbyist or his employer, and have required a sworn itemized statement of moneys expended.

A similar act was passed in Indiana this year as a direct result of disclosures in a grand jury investigation of irregular legislative practices.

The law has been copied in a bill pending before the Illinois legislature.

The law contains one important new feature affecting unincorporated associations or combinations of two or more persons who promote or oppose legislation. The law requires employers of lobbyists to be registered and requires lobbyists to secure a certificate of identification. But it was recognized that some of the most pernicious lobbies were those representing individuals who chip into a pool to promote or oppose legislation. A new provision was added therefore, in the terms here quoted:

"Hereafter it shall be unlawful for any unincorporated association, or combination of two or more persons to collect, receive, keep or expend any money for the purpose of promoting or opposing legislation pending or proposed before the general assembly or either

house or the committees thereof unless such association or persons first appoint a treasurer whose appointment shall be subscribed to in writing by at least two persons responsible for appointing such treasurer, which written appointment shall be filed in the secretary of state's office. No person shall be appointed or act as treasurer for any unincorporated association, or combination of two or more persons, who is not a citizen and resident of the State of Indiana. It shall be unlawful for any person to contribute to any fund of any unincorporated association, or combination of two or more persons until a treasurer has been appointed, as heretofore prescribed. No money shall be collected, received or expended by such unincorporated association, or combination of two or more persons except as it shall be paid over to and made to pass through the hands of the treasurer. The treasurer of such unincorporated association, or combination of two or more persons shall keep a faithful record of all money received, collected and disbursed for the purpose of aiding or promoting the success, amendment or defeat of any legislation in the general assembly or either house thereof, showing from whom received, the amount received in each case, to whom paid, for what the payments were made, and the amount in each case. The treasurer shall within thirty (30) days after the adjournment of the general assembly make a complete and detailed report to the secretary of state showing the itemized list of all money received, from whom received, all money disbursed, to whom paid and for what purpose. Such treasurer, upon a resolution of either house of the general assembly of this State, may be required to make such complete and detailed report to the secretary of state within such time as may be prescribed in such resolution therefor."

The law prohibits members of party committees and all public officials from receiving money for promoting or opposing legislation. It also prohibits employees of the legislature, newspapermen and others having the privilege of the floor of the house to act as paid lobbyists or to urge the passage or defeat of legislation in any way.

Non-Partisan Government. The movement for non-partisan government has been elevated into the realm of state affairs this year. The movement is widespread as applied to city offices and judicial positions and has been extended in some States to counties and in two States, Washington and Minnesota, to legislative officials.

This year the extension of the plan to state affairs is strongly recommended by Governor Johnson of California backed by the party platform declarations of the leading parties of that State. The plan is, therefore, likely to be adopted.

Governor Johnson said to the legislature in advocacy of the proposal: "Most earnestly do I suggest to you that our state officials be elected without party designation of any sort. The advance to non-partisanship in our State will be neither an extended nor a difficult step. The political units that compose the State have all adopted non-partisanship in the selection of their officials. The desideratum of all government is efficiency—to obtain honest and able officials devoted exclusively to the government. To govern well is to govern for all, not for a part or a class. To act in official capacity should be to act solely for the benefit of the State, and that official acts best who forgets every other consideration, but the interest of the State. Long ago this lesson was learned by cities. In California, as in many States, all of our cities elect their officials without regard to party affiliations at all, and without party designation. Why? Because experience taught these cities that thus they obtained better officials and greater efficiency. It is within the memory of all of us that these cities formerly elected their officials—city clerks, and the like—because of their partisan affiliations. Progress in city government swept from existence this old system, that had obtained so long, and its destruction was necessary in order that the best government be obtained. Recently the counties of the State adopted the plan that has been in vogue in cities, and elected all of the county officials without party designation. Inquiry among the counties has demonstrated that this method has met with almost universal approval, and it is hoped that the counties, in service, will be benefited just as the cities, in service, have been benefited. We now suggest applying the principle to the State as well, so that candidates for state positions will come before the people upon what they themselves are, not upon what their ancestors were; that they will ask the suffrages of the electorate upon their record or lack of record; their merits or their demerits, rather than upon the blind partisanship of themselves or their forefathers. There is nothing thus presented to you that seeks to destroy or even to affect political parties nationally. The government of the State has become now a matter of efficient business management, and efficient business management

may be best obtained without politics. The one argument most frequently heard against the course we suggest, is that parties stand for definite policies, and that they are necessary therefore, to preserve or to adopt some definite governmental tenets, and that for the adoption or failure to adopt these tenets, responsibility is fixed upon the *party* in power. The fallacy of this argument is found within the memories of all of us. In the state government today, none holds a particular party responsible for any specified act. All hold responsible the individual who is supposed to have caused the act. In the government of municipalities no party ever was held responsible for the acts of its agents who were officials, but the individuals were held responsible. In the government of the county today, for the specific act of an official, no party is held responsible, but the individual himself must answer to the people. Were the subject one of national import, which it is not, events of recent occurrence could readily be cited to show that the theory of party responsibility is now a mere political fiction. If a party be in charge of a corrupt boss or a number of corrupt bosses, to speak of party responsibility is absurd. If a party solemnly presents to the people a platform with well understood and thoroughly interpreted tenets, and the individual in power deliberately ignores the party's pledges, the responsibility rests with the individual. But in a political subdivision like the county, or the State, experience, the greatest teacher of all, has given us the absolute knowledge that there is, in reality, no party responsibility for the acts of individual officials. The people of the State of California at the recent election, themselves destroyed partisanship in California, and they said just as plainly as it was possible for them to say, that in the selection of their officials blind partisanship should play no part. If the voice of the people so recently heard shall carry with it the mandate of the people, non-partisanship in our state elections will be assured.

"While political economists may often speak of the necessity of parties, there is none but decries blind party worship. Blind partisanship is ever the refuge of the unworthy politically, and it is he who dares not to exploit himself or his record that insists upon ignorant, unyielding and unswerving party fealty. Of late years we have emerged from the darkness, and we have emancipated our cities and our counties. It is our fond hope that in this, as in other steps of progress, we may point the way for our sister States."

Finance Board—Indianapolis. As a result of factional fights between the mayor of Indianapolis and the city council which resulted in occasional deadlocks over appropriations and temporary loans, there was presented to the legislature of Indiana by the mayor a most remarkable proposal for legislation which would take away all of the power of the city council over finances and vest it in a board of finance consisting of seven members, the mayor, city controller, and five members appointed by the mayor subject to the approval of the governor of the State and subject to removal by the mayor at will.

This finance board would have power to make all appropriations for the conduct of business, and to make temporary loans or issue bonds. They would have the power to levy the taxes and approve the budget submitted by the controller. They would further have the power to license all businesses subject to license and to fix the number and compensation of all employees not specifically fixed by statute.

This proposal placed practically all of the power of the city in the hands of the mayor subject to no restrictions. The bill became a democratic party measure and passed the senate but was defeated by a few democrats in the house who refused to be bound by a party caucus on the subject.

While the bill was pending, a joint committee of the Chamber of Commerce and the Board of Trade investigated the subject and reported in favor of more centralized government in the form of the commission-business manager system. They condemned the finance board bill because it gave unlimited power without a check. The committee submitted a draft of a bill to the legislature embodying advanced features of the commission-business manager form of government but the bill did not pass.

The facts in the case of the finance board bill are of unusual interest coming as they do from Indianapolis—the home of the federal system of city government. That the system does not work smoothly is now fully apparent and an active movement is under way looking toward the establishment of a new form of city government.

Legislatures—Unicameral. A one chambered legislature was a subject of discussion in at least four States during this legislative year. Oregon voted upon an initiative proposition at the last election to abolish the senate and thus make one chamber but the measure was defeated, along with the long list of measures presented, by a vote of 123,429 to 62,376.

Governor Hunt of Arizona strongly recommended a one chamber legislature to consist of not less than seven nor more than fifteen members. Governor Lister of Washington also recommended a single chamber for the legislature of that State.

California is the fourth State to have such a measure under consideration. According to resolutions introduced into both houses for the amendment of the constitution, the legislative power would hereafter be vested in a legislative body of forty members elected by districts for a term of four years, one-half the membership expiring every two years. The legislature would meet every two years in January and remain in session for a full year. Special sessions may in the intervening year be called by the governor.

The legislative acts are subject to the referendum and the initiative is continued for the initiation and adoption of laws independently of the legislature.

Governors' Messages. A complete index and brief digest of the regular messages of the governors of all the States whose legislatures were in session this year has been published by the Public Affairs Information Service (H. W. Wilson Co., White Plains, New York). It is planned to supplement this with the important special messages and veto messages and issue the whole in a cumulated form at the close of the regular sessions.

Reorganization of state administration. The movement toward reorganization of state government proceeds from a widespread conviction that at present, organized state government is unscientific, uneconomical and inefficient. Long recognized by students of government, that fact has more recently been forced upon the attention of the general public by the rising tide of state expenditures.

The way to relief has been suggested by the popular movement for efficiency methods in business and by the widely accepted analogy between business and government, rather than by the acceptance of the canons of political science.

The first steps toward reorganization have been taken in fourteen States by the creation of commissions or committees on "efficiency and economy." These are sometimes permanent institutions like the Commissions on economy and efficiency in Massachusetts and New York, the board of public affairs in Wisconsin, and the budget commissioner in Ohio, but are more often, as in Connecticut, Illinois, Iowa, Louisiana, Minnesota, Mississippi, Nebraska, New Jersey, Pennsylvania and

South Dakota, temporary bodies. Some, like the committees created in Louisiana, Mississippi and South Dakota, are confined to auditing accounts and introducing accounting methods; others, as in Connecticut, Illinois, Minnesota, Iowa and Pennsylvania are chiefly concerned with reorganization, and secondarily, if at all, with functions; still others, as in Massachusetts, New Jersey, New York and Wisconsin, give at least equal prominence to functions.

The Ohio budget commissioner makes suggestions as to departmental organization and legislative procedure and the Nebraska committee, created primarily to study legislative procedure and the budget extends its investigation to matters of general reorganization. Iowa likewise offers some suggestions on legislative procedure.

The commissions in Massachusetts, New York, Ohio, Illinois, Minnesota and New Jersey have made a careful survey of the existing organization of the several administrative departments, in some cases accompanied by organization charts. Efficiency engineers or accountants were employed in at least Illinois, Iowa and New Jersey.

The Connecticut commission, while offering no general scheme, makes specific recommendations, notably for the consolidation of numerous authorities into a department of agriculture and a department of labor and industry and suggests further investigations looking to future consolidations.

The undesirable conditions disclosed by the several surveys, are summed up by the Illinois commission thus: Duplication of positions and salaries; work poorly done; high cost of service due to inefficient organization; loss from purchasing in small lots; lack of correlation and coöperation between offices; failure to get before the legislature, facts essential to appropriations and legislation; failure to fix responsibility.

The Iowa report says that "the worst faults in the present organization, are lack of unity and lack of responsibility. The government is incoherent. There are a multitude of disconnected, unaffiliated departments and bureaus over which neither the governor nor the legislature nor the people have effective control."

The commissions in Illinois and Minnesota present elaborate plans of reorganization, that in Minnesota being in the form of a legislative bill for a "Civil Administrative Code." New Jersey and Iowa present general but less detailed outlines. Nebraska sketches a possible future plan. The permanent commissions make no comprehensive proposals but confine themselves to specific changes of details which may fit into larger plans to be worked out.

The plan proposed in Illinois confessedly following the analogy of the federal administration, so far as the state constitution will permit, groups the more than one hundred offices, boards and commissions into eleven administrative departments, viz.: state, law, finance, trade and commerce, labor and mining, health, military affairs, agriculture, public works, charities and corrections and education. At the head of each department is a central authority, either an individual or a board, who is, except in so far as constitutional officers are concerned, appointed by the governor and senate and responsible to the governor. Each of the present administrative services, except in case of consolidations proposed, is made a bureau in one of the departments.

The department of finance is to be administered by a board of finance composed of the comptroller, tax commissioner and revenue commissioner appointed by the governor and senate and the auditor of public accounts and state treasurer ex-officio. The budget is to be prepared by the comptroller.

This plan is not an ideal scheme, but a practical proposal which it is entirely possible to place in operation by statutory authority.

The proposed "administrative code" of Minnesota provides for a group of offices of "general administration and finance" including the constitutional offices of secretary of state, attorney-general, auditor, treasurer, tax commissioner and a civil service commission. Besides these are the five departments: public domain, public welfare, education, commerce, industry and labor and agriculture.

The department of public domain includes bureaus of land and mines, forests, game, drainage, highways and buildings. The department of public welfare, includes charities, corrections, health and pardons.

The department of commerce, industry and labor covers the activities of labor, banking, insurance, standards, railroads, and warehouses.

The code contains comprehensive provisions for a merit system for the clerical service and for the standardization of salaries.

The financial sections provide for a complete budget of estimates of revenues and proposed expenditures.

The plan proposed in Iowa is less detailed. It groups existing administrative departments into three great departments of social progress, of industries and of public safety.

The attorney-general and the railroad commissioner are to be brought into one of these departments but the other constitutional officers are to be retained for the present.

The tentative plan presented in New Jersey shows much less consoli-

dation of activities. No less than twenty-two departments are included, all responsible to the governor except the treasury which is under legislative control.

A budget system of estimates is contemplated in the plans in Iowa, Minnesota, Nebraska and Illinois, to be prepared in the last State by the comptroller but in the others by the governor. A suggestion comes from the Pennsylvania commission that the governor be elected in the odd year so that he may have the advantage of a year in office before preparing a budget and recommending legislation. An alternative suggestion is that either the governor be inaugurated December 1, in order to give time to prepare estimates or that the budget be presented not earlier than February 1. The other proposals would place the preparation of the estimates in the hands of retiring officers or necessitate its hurried preparation by those new in office.

The Nebraska committee proposes immediate legislative reforms with respect to the printing of bills, journals and calendars, printing contracts, committees and employees. Reforms for future consideration include a unicameral legislature, a civil service law, a budget to include estimates of both revenues and expenditures, an efficiency survey of the State and the reorganization and consolidation of administrative offices. The Iowa legislative suggestions include reform of procedure, the committee system, and in the number of employees.

The results to be anticipated from a line of reorganization upon the main principles of which all the reports are agreed are summed up by the Illinois commission as: Harmony and coöperation of administrative action and between the administrative and legislative branches; a more definite system of supervision of offices; more adequate information for the use of the legislature; responsibility through the governor to public opinion; a controlling and fixing of responsibility for estimates and expenditures; and notable economy in the conduct of government.

It is of interest in considering the movement toward the reorganization of state government to note the healthy interest in, and sane opinions on this subject expressed by many governors is the messages of 1915. General administrative centralization is advocated in at least ten States: Colorado, Idaho, Kansas, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Tennessee, West Virginia and Wisconsin. The governor of Idaho says: "They (the people) desire from your hands and mine a complete reconstruction of the affairs of the state government upon lines of efficiency and economy and especially upon the question of taxation."

The short ballot is endorsed in several States: Alabama, Colorado, Michigan, Nevada, New York, Oklahoma, Oregon, Washington, and West Virginia. As a complement to the short ballot, a governor's cabinet is proposed in Michigan and Nevada. In the latter State it is proposed to make it bi-partisan.

Reorganization of administrative departments by redistribution of functions, consolidations and abolitions are generally called for from Massachusetts, Connecticut, and New York in the East, to Washington, Oregon and Nevada in the West as well as in Alabama, Oklahoma, Kansas and Missouri. Power of removal of local officers is proposed in several States: Alabama, Michigan, New Hampshire, New Jersey, Oregon, Pennsylvania, Utah and Wyoming. A unified state policy is held desirable in Colorado but in Oregon the governor expressly disclaims any administrative program.

A centralized board for educational institutions and interests is proposed in three States: New Mexico, North Dakota, and Wisconsin, and a board of education in Alabama. A board of control for charitable and correctional institutions is favored in six States: Alabama, Massachusetts, Nevada, New Hampshire, New Mexico and Tennessee but opposed in Missouri. A central purchasing agency finds favor in Arizona, Missouri, Nevada and Ohio. An "economy and efficiency" survey is favored in California, Colorado, Connecticut and Kansas, and a constitutional convention in Alabama, Massachusetts, Tennessee and Washington.

Recommendations of reorganization or reform in the legislative branch include: fewer laws in several States; fewer sessions, North Dakota; more sessions, Alabama; a longer term, North Dakota; and longer sessions, Washington. A reduction in the size of the legislature is recommended—no less than five States. In Arizona it is a unicameral body of from five to fifteen, subject to recall; in North Dakota it is a reduction of from one-third to one-half the present number; in Oklahoma it is a senate of twenty-four and a house of seventy-five; in Washington it is a single house of twenty-five, five being chosen at large from each congressional district, while in Nevada no specific number is suggested. Reform of procedure is advocated in six States: Alabama, Connecticut, Michigan, North Dakota, New Jersey and Rhode Island. A reform in the number of pay of legislative employes is suggested in Delaware, Nebraska, Oregon and West Virginia.

Reorganization is usually in the messages associated with finance. The rising tide of expenditures and the need of economy are mentioned,

sometimes rhetorically and sometimes supported by convincing figures. Fourteen messages urge the adoption of a "budget system" and minor financial reforms are urged in many cases.

Among the few jarring notes the most strident is that sounded by the incoming governor of Ohio, who sees in centralization of authority in the name of efficiency, a menace to free government. He says "Efficiency is important, self government is vital." "Freedom and the strength of civic character which come only from the exercise of self government are paramount to efficiency." "It is one of the evils of concentrated authority that the people come to look to the executive solely for needed changes in legislation, disregarding their own immediate constitutional representatives in the law-making bodies." "The people have looked with suspicion on all efforts to take power from them or their own representatives and vest it in some central authority with large powers of appointment." But, says he, "Fortunately for the people in our State not all the executive power is vested in the governor." The tenor of this message may, however, be accounted for in part in the light of recent vicissitudes of politics in that State.

FRANK G. BATES.

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Home rule legislation during the years 1913-1914. The advance which home rule for cities has made since 1912, when four States (Arizona, Nebraska, Ohio, and Texas) took their stand on the side of local autonomy, has been slight in terms of States gained, yet two important state optional charter bills have been produced—one being now in operation. The New York bill (Ch. 444 of the Laws of that State) and The Report of the Joint Special Committee on City Charters in Massachusetts (Senate doc. no. 254. January, 1915), deserve detailed treatment both as regards their provisions and as representing action in two States in which the legislatures have been vigorous in their interference with local city affairs. First, however, should come a more general survey of what has been the progress of home rule during the years 1913-1914.

Maryland and Wisconsin. In addition to those twelve States which, up to 1913, have conferred upon some or all of their cities the power to draft or amend their own charter,¹ several others have taken steps in

¹ Missouri, 1875; California, 1879; Washington, 1889; Minnesota, 1896-98; Colorado, 1902; Oregon, 1906; Oklahoma and Michigan, 1908; Arizona, Nebraska, Ohio and Texas, 1912.

that direction. The legislature of Maryland has passed a constitutional amendment giving to the city of Baltimore the right of home rule, and this will be voted upon by the people of the State at the general election to be held in November, 1915. A similar amendment, providing, however, for state-wide home rule was defeated in November, 1914, at a general election in Wisconsin, by over fifty thousand votes. The terms of the proposed amendment to the constitution were unusually broad: "That cities and villages have power and authority to amend their charters and to frame and adopt new charters, and to enact all laws and ordinances relating to their municipal affairs, subject to the constitution and the general laws of the State."

Illinois, Kansas, Minnesota and Iowa. In Illinois, Kansas, Minnesota and Iowa public sentiment is strongly in favor of home rule and its partisans are hopeful of accomplishing substantial results. The question in Illinois grew out of a discussion of the public utilities law of 1913 which, it is claimed, violates Chicago's right of home rule, and the referendum which was submitted to the voters with the practical effect of a straw ballot gave the advocates of home rule the slight majority of a little more than eight thousand votes. The leagues of state municipalities in Iowa, Minnesota and Kansas have declared for home rule, chiefly, here also, as a measure offsetting state control of public utilities.

Missouri, Michigan and Washington. A further grant of home rule to St. Louis was made by the legislature of 1913, which transferred the appointment of the excise and police boards in that city from the governor of the State to the mayor of the city. Power of removal, however, may be exercised by the governor, the mayor, or the city council; if all members should be removed by the governor, he may fill the vacancies. This provision, it is evident, allows home rule to the city but permits the State to interfere in case of a needed enforcement of its laws. The supreme court in the State of Washington has decided that a general law enacted by the legislature is superior to and supersedes all freeholder charter provisions inconsistent with it. The home rule law in Michigan was upheld by the circuit court of the State in 1913, at its first real test, when three injunctions were brought against it.

Ohio and Texas. During the two years' trial of home rule in Ohio twenty-five cities have had charter revisions under consideration. Of these cities the voters in eight have rejected proposals to elect commissions for the purpose of framing new drafts; in seven others such commissions have been elected but their proposals were not accepted. Nine

cities (Ashtabula, Cleveland, Columbus, Dayton, Lakewood, Middleton, Springfield, Sandusky and Toledo) have adopted new charters. These charters have been of the modern variety—four providing for a city manager, two for commission government, and three drawn on the federal plan, with provision for non-partisan and short ballots, direct legislation, preferential voting, etc. Since the enabling act in 1913, seven cities in Texas have adopted new charters (Amarillo, Denton, McKinney, Sweetwater, Waco, Wichita Falls, and Taylor), and seven others have considerably amended their present forms of government. Other cities which have adopted home rule charters during 1913-1914 are St. Louis, St. Paul, Montrose (Colo.), Portland (Ore.), and Phoenix; such bills have been rejected in Seattle, Detroit and Minneapolis.

New York and Massachusetts. In New York State the Cullen-Levy bill, providing that every city in the State shall have the power to regulate, manage and control its property and local affairs and be granted all rights, privileges and jurisdiction necessary and proper for carrying such power into execution, was approved by the governor in April, 1913, and the municipal empowering act was upheld as constitutional by the state supreme court in September of the same year. Under these provisions the "Optional City Government Law" became effective on April 16, 1914, whereby authorization was given to "a city of the second or third class to adopt a simplified form of government." This act, which affords choice from among six forms of city government, finds a counterpart in the proposed solution of the home rule problem in Massachusetts. In that State a recess legislative committee as appointed in July, 1914, to "investigate the subject of charters and laws for governing cities, and providing a standard form of charter for the government of cities both by commission and otherwise, and any other matters which the committee may deem pertinent in regard to the subject of city laws and charters." Its report, issued in the following January, offers four types of government for adoption by any Massachusetts city, with the exception of Boston.

New York law. The council. In the six plans included in the New York law there are not so many differences as one would expect to find. A small council is everywhere given the balance of power. Plan E provides nine councilmen, F permits their election by districts, though only one from each ward; otherwise the council consists of five or six members, elected at large. In three forms, (A, B, and C) the mayor is merely a member of the council, its presiding officer, who has a vote but no veto, and who oversees general municipal affairs, with the privi-

lege of making reports and recommendations to the council, and is the official head of the city for functions, etc. Plan C gives the council power to appoint a city manager to take administrative and executive charge, and, while he is given wide jurisdiction, he is subject in all matters to the council. The council itself, in Plans A and B, has complete authority over departmental affairs; in A dividing the supervision among its own members and in B performing the duty as a collective body.

The mayor. In Plans D, E and F the mayor is given the executive and oversight as to administration, the difference here being as to the size and election of the council. As chief executive head of the city he maintains peace and order, enforces laws and ordinances, looks to it that officers of the city perform their duties. To the council, however, is given the appointment and removal of officers. All resolves and ordinances of that body are submitted to the mayor; but if he disapprove the council may pass over his disapproval by a four-fifths vote. In each of these plans a maximum compensation for councilmen is indicated; in D, E and F, the salary of the mayor is three times that of a councilor, in A it is one-fourth larger, in B and C it is the same.

Massachusetts Report. Plans A and B. Much more powerful is the mayor in Plan A submitted in the Massachusetts report, which is called the "responsible executive type." Here the government consists of a mayor and council of nine elected at large, with the council simply a legislative body. Absolute power of appointment and removal of heads of departments and members of boards (save, of course, the school committee, assessors, and those appointed by the governor of the State), is given the mayor, as well as the veto power in regard to council measures. Plan B divides authority between the mayor and a council of fifteen or eleven, elected partly by wards and partly at large. The mayor as executive head appoints all officers, but this is subject to confirmation by the council. Curtailment of power is shown also in the ability of the council to pass by a two-thirds' vote a measure of which the mayor has registered disapproval. In both of these plans salaries are fixed by the council, a maximum of \$5000 for the mayor and \$500 for councilmen being set.

Plans C and D. Commission government is provided by Plan C and a city manager by Plan D, with a council of five elected at large, in each case. In Plan C the affairs of the city are divided into the five departments of administration, finance, public works, public property and health, and each commissioner is elected for a specific de-

partment, that of the mayor being administration. The mayor, being head of that department, is the chief executive officer of the city, and presides over council meetings, where he may vote. He has no veto power. General jurisdiction over the policies and work of each department is in the hands of the council as a whole, but each commissioner has full power in his own department and appoints and removes officers subject to confirmation by the council. The salary limit is \$5000 in the case of the mayor and \$4000 for the other commissioners. The mayor in Plan D is that commissioner who receives the largest number of votes; he presides over the council and is the official head of the city; he may vote but has no veto power. The city manager is appointed and removed by the city council; he is the administrative head of the city and is responsible for the conduct of its departments. His salary is determined by the council; that of the mayor may not exceed \$2000, of other commissioners \$500.

General provisions. On three important matters the Massachusetts report allows no departure from uniformity—municipal finance and the assessing system, civil service, and school administration. The regulations now in force throughout the State regarding boards of assessors, accounting methods, etc., and civil service are to be kept unimpaired by the new bill. The school committee in each case is to consist of six members elected at large. The committee is given entire freedom to govern affairs in its own bailiwick, even to the control of all school buildings and grounds and the planning of new ones. To insure consideration of the city's financial condition in general while making its plans, the mayor is made chairman *ex officio* of the committee. Charter provisions or the general law relating to boards of education in New York are not to be affected in any way by the adoption of one of the new forms of charters. The New York law states that all appointments, promotions, removals and changes in the status of the civil service of a city shall be in accord with the civil service law provisions, but it provides for the appointment of three civil service commissioners for six-year terms, in Plans A, B and C by the city council, and in D, E and F by the mayor. Concerning the assessment of property in Plans A, B and C, the council is given all powers and duties of a board of assessors, although it may provide for one by ordinance; in D, E and F the assessing body is appointed by the mayor with the advice and consent of the council. The judiciary in New York is affected by the new scheme only in case of appointive justices, who are to be chosen by the council or the mayor according to the type of charter selected.

An interesting feature of the Massachusetts bill is the provision that, in the taking of land for municipal purposes, if the price proposed is twenty-five per cent in excess of the valuation, the land must be taken by eminent domain. Provision is also made for direct legislation, and a separate bill is appended in regard to preferential voting. Primary elections are to be abolished and nominations for all elective offices are to be by petition only. Tenure of office is two years in Massachusetts, thereby avoiding necessity of the recall, but in New York it is in every case four years.

The two schemes are in agreement in several important respects other than as represented by the types of charters offered. It will be noted that councils are in all cases unicameral. Both bills, likewise, emphasize the prohibition of any city official from participating in contracts with cities. The method of adoption of one of the new charters is identical save that in Massachusetts the question may be submitted only at a general election and that there is a slight difference in the number of voters necessary in signing a petition for a new charter—the difference being merely that in Massachusetts signatures must be had from ten per cent of the voters *registered* at the last general state election, while in New York the same percentage is required from the number of votes *cast*. Both States rule that, once adopted, a charter cannot be changed for a period of four years after the inauguration of the first officers elected under its provisions.

The Massachusetts document, if it becomes a law, will furnish a charter with all the modern features, to be selected from the four generally-accepted standard types, for all cities in the States, inasmuch as Plan A of the bill is modeled after the present Boston charter. Its scheme has more simplicity and there is less duplication among the separate plans than is found in the New York act. It has also more features which will make their appeal to municipalities with progressive inclinations. The two bills would seem more assured of success than those which have been introduced in several other States to provide for the adoption of the commission form of government only.

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NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY JOHN M. MATHEWS

University of Illinois

The twelfth annual meeting of the American Political Science Association will probably be held at Washington, D. C., during the Christmas holidays. The program committee for the meeting consists of Prof. C. L. King, of the University of Pennsylvania, chairman, Prof. John H. Latané, and Prof. C. A. Beard. The American Historical Association will meet at Washington at the same time.

Prof. Charles A. Beard has been appointed supervisor of instruction in the Training School for Public Service, organized by the New York bureau of municipal research. Professor Beard will not give up his connection with Columbia University, where he has recently been promoted to the rank of full professor of politics.

Prof. John H. Latané, of Johns Hopkins University, recently delivered an address at Goucher College on "Problems of Neutrality Growing out of the Present War." The address has been reprinted in the March number of the *Johns Hopkins Alumni Magazine*.

Dr. J. David Thompson has resigned from the legislative reference division of the Library of Congress.

Dr. Charles McCarthy has severed his connection with the United States commission on industrial relations.

The death is announced of Prof. Charles R. Henderson, of the University of Chicago. Among multifarious activities he was formerly president of the National Prison Association, United States commissioner on the international prison commission, and since 1911 has been an associate editor of the *Journal of the American Institute of Criminal Law and Criminology*.

Prof. R. M. McElroy, head of the department of history and politics in Princeton University has accepted an invitation to spend eight months of the year 1915, in delivering a series of special addresses, upon the subject of "History of the Origin and Development of Representative Government," in the chief centers of China. Professor McElroy and his family will sail for China on the SS. *Mongolia*, from San Francisco on June 12.

Prof. Paul Van Dyke will return from his sabbatical year in Europe early in September, and will resume his courses in Princeton University.

The department of history and politics in Princeton University has just issued a new plan of graduate studies in history and politics, leading to the degree of doctor of philosophy. The plan is an attempt to combine training in the intensive research methods in a special field, with a course of reading covering a very wide area. The plan of study appears in the *Annual Register of the Princeton Graduate School, 1915-16*, department of history and politics.

Prof. Dana C. Munro, will begin his work as professor of medieval history in Princeton, early in September. He will act as the head of the department of history and politics, during the absence of Professor McElroy.

Prof. Arnold B. Hall of the department of political science, University of Wisconsin, will teach in the summer school at Dartmouth in the coming summer session.

Mr. Herman C. Beyle has been appointed assistant in political science in the University of Wisconsin for the coming year; Mr. Harold S. Quigley fellow and Mr. H. Walter Thompson scholar.

Prof. Frederic A. Ogg, University of Wisconsin, has recently published one of the American Crisis Biographies, *Daniel Webster*. George W. Jacobs Company, Philadelphia, is the publisher.

Prof. A. B. Hall, University of Wisconsin, has gotten out a new and enlarged edition of Fishback's *Elementary Law* which Bobbs-Merrill Company will publish about May 1. The LaSalle Extension University will publish an *Outline of International Law*, with bibliography,

prepared by Professor Hall, about July 1. This volume is a synopsis written in non-technical language for the use of general readers.

Prof. F. A. Ogg of the department of political science, University of Wisconsin, will teach in the summer school at Columbia University in the coming summer session.

Prof. Payson J. Treat, of Leland Stanford University, has been promoted to a full professorship in that institution. He gives courses on comparative colonial administration and on the present governments of Japan and China.

The political science department at the College of the City of New York has been enlarged by the transfer to it of George M. Brett from the mathematics department and of Guy E. Snider from the history department.

Prof. H. B. Woolston, of the department of political science of the College of the City of New York, will give courses at the University of Chicago this summer.

Prof. W. F. Dodd, of the University of Illinois, has been appointed associate professor of political science at the University of Chicago.

Dr. Rasmus Saby, of the department of political science in Cornell University, will give courses on American government and comparative government in the University of Minnesota summer school this year.

The Iowa Social History Series is a new line of publications undertaken by the State Historical Society of Iowa. The first volume to appear in this series is the *History of Poor Relief Legislation in Iowa* by John L. Gillin. Another volume which will soon appear is *Social Legislation in Iowa* by John E. Briggs.

Dr. Dan E. Clark, instructor in the department of political science at the State University of Iowa, is the author of *The Government of Iowa*, published by Silver, Burdett and Company.

Dr. C. R. Aurner is the author of a book on *The History and Government of Iowa*, published by the Houghton, Mifflin Company.

Text-book Legislation in Iowa is the title of a 60-page monograph by Mr. O. E. Klingaman recently issued by the State Historical Society of Iowa.

A pocket edition of the *Constitution of Iowa*, with historical introduction and index by Benj. F. Shambaugh, was recently issued by the State Historical Society of Iowa.

The Princeton University press has recently issued a new work by Prof. H. J. Ford entitled *The Natural History of the State: An Introduction to Political Science*.

Prof. Raleigh C. Minor of the School of Law, University of Virginia has completed the manuscript of a study of *Federalism as Applied to World Peace*.

Dr. William O. Scroggs, professor of economics and sociology at Louisiana State University, gave the first lecture of the 1915 series on the Phelps-Stokes Foundation at the University of Virginia on March 30. His subject was, "The Civic Status of the American Negro."

Dr. Charles Hillman Brough, professor of economics and political science at the University of Arkansas, will resign his chair at that institution at the close of the present session. He will be a candidate for governor of Arkansas in the forthcoming campaign. Prof. Neil Crothers will succeed him at the University of Arkansas.

D. Hiden Ramsey, formerly of the department of political science at the University of Virginia, will be a candidate for the office of commissioner of public safety under the recently adopted commission form of government in Asheville, North Carolina.

The next meeting of the University Commission on Southern Race Questions will be held on May 5 in Montgomery, Alabama.

Prof. W. M. Hunley of the University of Virginia was the official representative of that institution at the Conference on Charities and Corrections held at Baltimore, Maryland, in April.

A reorganization of the department of political science at Indiana State University has taken place. Prof. A. S. Hershey becomes head

of the department and will give courses on international law and relations. Assoc. Prof. F. G. Bates will give courses on municipal government and administration. Mr. J. A. Lapp, of the Indiana bureau of legislative information, will lecture on "Special Problems of Legislation." Prof. J. A. Woodburn has been transferred to the history department in the same institution.

A new department of political science has been created at Northwestern University, which will begin its work in the fall of 1915. This has been accomplished by separating the work in diplomacy and government from the history department, adding a number of new courses and engaging a new instructor. To the new chair of political science has been appointed Prof. P. O. Ray, of Trinity College, Connecticut. Prof. N. Dwight Harris will be professor of European diplomatic history and head of the department, and Dr. B. B. Wallace will continue as instructor. For housing the new department of political science, as well as those of history and economics, the new Harris Hall of Political Science has been erected at a cost of \$200,000 from funds provided by Mr. N. W. Harris, and will be ready for occupancy at the opening of the next academic year.

A bureau of research and reference in state and federal government has recently been established at the University of Texas. The main purpose of this bureau is to gather information and data for use with classes in these fields. The material gathered will also be used in the preparation of reports especially in the field of state government, and in this way it is expected that the bureau may render service to the legislature and various state departments. The bureau is under the direction of Profs. C. S. Potts and C. G. Haines, with F. M. Stewart as assistant.

A series of six lectures on "Internationalism and the War" was given at Northwestern University this spring. Four of these, on "The Balance of Power in Theory and Practice," "The Near Eastern Question," "Europe and the Southern Slav Question," and "European Diplomacy and the War" were given by Prof. N. Dwight Harris, of Northwestern University. The others were given on "American Neutrality and the European War," by Prof. J. W. Garner, of the University of Illinois, and on "War Law," by Prof. J. S. Reeves, of the University of Michigan.

A series of ten lectures was given at Columbia University this spring under the auspices of the Academy of Political Science, the New York Bureau of Municipal Research and the Columbia University Institute of Arts and Sciences on the "Functions, Working, and Structure of City Government." Among the speakers were Mayor J. P. Mitchell and Dr. F. A. Cleveland.

A series of lectures were given at Dartmouth College this spring by Prof. W. H. Taft of Yale Law School. His subjects were "The Presidency," "Signs of the Times," and "Popular Government and the Supreme Court."

Prof. Ernst Freund gave in March at the Johns Hopkins University a series of six lectures dealing with "Principles of Legislation." In May Prof. J. W. Garner, of the University of Illinois, gave four lectures at the same university on "French Administrative and Judicial Institutions."

The second annual course of lectures on citizenship at Cornell University, instituted for the purpose of interesting graduates in civic and social movements, was given this spring. Among those who spoke were Roscoe Pound, Jeremiah W. Jenks, John H. Finley, and Lawson Purdy.

Ex-President Taft delivered an address at Princeton University on March 9 before the International Polity Club on the "International Questions which at Present Face the United States."

The Yale lectures on the "Responsibilities of Citizenship" were delivered this spring by Ex-Representative Samuel W. McCall, of Massachusetts.

The Carnegie Endowment for International Peace has arranged with Thomas Y. Crowell Company for the translation into foreign languages of Dr. Chas. E. Jefferson's *The Cause of the War*. This will be broadly distributed in European countries.

The Indian Emigrant is the title of a new monthly magazine, published at Madras, and edited by T. K. Swaminathan. It is to be devoted to the status and doings of Indians in British colonies and foreign countries, and advocates the equal rights of British citizenship within the Empire.

An annual series of lectures on American politics has been inaugurated at the University of North Carolina. The first lecturer in the series was Ex-President Taft, who spoke there this spring on "Duties, Powers, Limitations and Responsibilities of the Presidency."

The System as Uncovered by the San Francisco Graft Prosecution, by Franklin Hichborn (San Francisco, J. H. Barry Company, 1915, pp. 464), is an interesting account, told in graphic style, of the sordid facts brought out at this famous prosecution. The author, who is well known for his accounts of the California legislative sessions of 1909, 1911, and 1913, gives credit for the disclosure of the "system" to Rudolph Spreckels, who furnished the funds, and F. J. Heney, who conducted the prosecution.

New volumes which have recently appeared in the National Municipal League Series include *The City Manager*, by H. A. Toulmin; *Women's Work for the City*, by Mary R. Beard; *The Relation of the City to the Cost of Living*, by C. L. King; and *Satellite Cities*, by Graham Taylor.

The utilities bureau, a national agency for the collection and dissemination among cities of information relative to public utilities has recently been formed. Dr. Charles R. Van Hise, president of the University of Wisconsin, is president of the board of trustees and Dr. C. L. King of the University of Pennsylvania, is secretary.

Courses will be given this year in the summer school session of the University of California on "American City Government," and "European City Government," by Prof. H. G. James, of the University of Texas, and on "Introduction to Political Science," and "Political Parties," by Prof. V. J. West of Leland Stanford University.

The annual meeting of the Intercollegiate Civic League was held in the early part of April in New York and Washington. This league has been reorganized as a division of the National Municipal League. Among the members of the executive committee are Charles A. Beard, Richard S. Childs, E. M. Sait, and Clinton Rogers Woodruff.

Problems of Community Life, by Seba Eldridge (New York, T. Y. Crowell Company, 1915, pp. 180), is a sketchy outline of applied soci-

ology in which the author touches cursorily upon sixty problems of community life, chiefly as found in New York City. One chapter is devoted to "Politics and Government in New York." The book has no index.

The group of papers read at the Conference on Latin America held at Clark University have been published under the title *Latin America: Clark University Addresses*, edited by G. H. Blakeslee (New York, G. E. Stechert and Company, 1914, pp. 388). They deal with such subjects as The Monroe Doctrine, The Panama Canal, Mexico, and in general, the relations between the United States and Latin America.

An *Index to United States Documents Relating to Foreign Affairs, 1828-1861*, compiled by Miss Adelaide R. Hasse of the New York Public Library is about to be issued by the Carnegie Foundation.

The third and final volume of Freiherr von Maltzahn's *Der Seekrieg zwischen Russland und Japan, 1904 bis 1905* (Berlin, Mittler, 1914, pp. 262), has appeared.

A review of minimum wage legislation by Irene Osgood Andrews and a bibliography on the same subject by C. C. Williamson are included in the appendix to the *Third Report of the Factory Investigating Commission* of New York, 1914 (Albany, pp. 676). The minimum wage commission of Minnesota has published a pamphlet containing the opinion of the Attorney-General of Minnesota on the constitutionality of the Minnesota minimum wage law and the decision of the Oregon supreme court on the constitutionality of the Oregon law.

The *First Biennial Report of the Tax Commission of the State of South Dakota, 1913-1914* (Aberdeen, 1914, pp. 532), contains besides the recommendations of the commission, a proposed codification of the revenue laws of the State. There is also, beginning at page 151, a list with brief description of the various permanent state tax commissions. The *Report of the Tax Commissioner of Connecticut* for 1913 and 1914 contains, besides routine matters, the papers read at the annual conferences of state tax associations held at Hartford during the above years.

Public Utilities Reports Annotated is the title of a new publication, the first volume of which has been brought out by the Lawyers Coöperative Publishing Company of Rochester, New York. The aim is to cover

the decisions and rulings of the various state public service commissions and also the decisions of state and federal courts relating to public utilities.

An elaborate report on *The Government of the State of New York: a Description of its Organization and Functions* (1915, pp. 768), has been prepared by the New York State department of efficiency and economy, for the constitutional convention commission of that State. The New York bureau of municipal research coöperated in preparing the report.

The January number of the *Annals of the American Academy of Political and Social Science* contains the proceedings of the conference of American mayors held in Philadelphia last November and deals with the subject "Public Policies as to Municipal Utilities." The March number is devoted to the problem of tax reform, national, state, and local. The nineteenth annual meeting of the Academy was held in Philadelphia in April, at which papers were read upon "American Problems Arising out of the European War." The celebration of the twenty-fifth anniversary of the founding of the Academy has been postponed until next year.

A digest of the governors' messages to the legislatures of 1915 has been prepared by Mr. John A. Lapp of the Indiana bureau of legislative information.

The Proceedings of the Governors' Conference, held in Madison, Wisconsin last November have been published (Madison, Wis., 1915, pp. 306). About twenty governors were in attendance. The principal subjects considered in the addresses are: "Rural Credits," "State Control of Natural Resources," "Uniformity of Safety and Sanitation Laws for Places of Employment," "Workmen's Compensation Laws," "Submission of the Governors' Recommendations in Bill Form," and "Uniformity of Laws Relating to Foreign Corporations." The secretary of the conference is M. C. Riley, of Madison, Wisconsin.

It is announced that a convention of state lieutenant governors will meet at Rhea Springs, Tennessee, in May for the purpose of forming an organization to promote matters in which members are interested.

The *American Year Book* is rapidly becoming an almost indispensable work of reference on current developments in a very wide range of human endeavor. The fifth volume in the series, which has recently appeared (New York and London, D. Appleton and Company, 1915, pp. xviii, 862), contains in general the same features as in the former volumes, except, of course, for the space devoted to the European War.

The ninth annual meeting of the American Society of International Law, which was scheduled to be held in April, has been postponed so as to meet with the section on international law of the Second Pan-American Scientific Congress at Washington, D. C., from December 27, 1915 to January 8, 1916. The newly organized American Institute of International Law, composed of representatives of national societies of international law formed in the different Pan-American countries will also hold its first session in connection with the congress.

Special Libraries for January contains a "List of References on the Regulation of the Issuance of Railroad Stocks and Bonds."

Through the bureau of the census there has been prepared a *Summary of State Laws Relating to the Dependent Classes, 1913* (Washington, Government Printing Office, 1914, pp. 346). The volume digests the principal laws of the various States dealing with the administrative and supervisory agencies for relief of the dependent classes. There is also appended a tabular review of summaries of the principal topics included in the laws cited.

A new edition of Benjamin Kidd's *Social Evolution*, revised and somewhat enlarged has appeared from the press of the Macmillan Company. The most important of the additions is the author's reply to criticisms contained in appendix I.

The Year Book of the United States Brewers' Association for 1914 (New York, 1914, pp. 353), contains the reports delivered at the annual convention of the brewers held at New Orleans in November, with added chapters on the alcohol question and saloon reform.

The annual Conference on International Arbitration will be held at Lake Mohonk, New York in May. The award of the Pugsley prize for the best essay on this subject will be made at the conference.

The *Proceedings of the Eighth Annual Conference of the National Tax Association* (Madison, Wis., 1915, pp. 499), which has recently appeared, contains the usual number of valuable papers and addresses dealing with the many phases of tax administration in this country and Canada—the special problems of particular States, the tax legislation of the year, statistics of taxes and public expenditures and accounts of the practical working of various forms of taxation, such as of express companies, of foreign corporations, of securities, of life insurance, of incomes, of metalliferous mines, and of land values.

The Ninth International Congress on Social Insurance will be held in Washington, D. C., September 27 to October 2, 1915. Existing agencies performing social insurance functions and the various kinds of social insurance, such as workmen's accident, sickness, old age, unemployment, etc., will probably be considered. The secretary of the congress is M. M. Dawson, 130 East Twenty-second Street, New York City.

At the eleventh annual conference of the American Medical Association, held in Chicago in February, one session was devoted to "Public Health and Legislation." The discussion on the report of the committee on medical expert testimony was participated in by Prof. John H. Wigmore of Northwestern University Law School, and Judge Harry Olson of the Chicago municipal court. Other subjects discussed at this session were "A Model Bill on State Public Health Organization," and "State Regulation of Those who Treat the Sick," by Hon. G. H. Hodges, ex-Governor of Kansas.

Plans are on foot for the organization of a Society for the Promotion of Training for Public Service. This is an outgrowth of the work of the committee on practical training for public service of the American Political Science Association. The secretary of the committee on organization is E. A. Fitzpatrick, of Madison, Wisconsin. Among the other members of the committee on organization, according to a pamphlet sent out by the promoters of the plan, are Prof. Charles McCarthy, of the University of Wisconsin, President Sidney E. Mezes, of New York City College, and Winston Churchill.

A Pan-American financial conference will be held in Washington, D. C., on May 10, for the purpose of strengthening the financial and commercial relations between the nations of the western hemisphere.

The fourth annual meeting of the Ohio Municipal League was held in Columbus in February. The discussions centered principally around the question of state financial administration with reference to the needs of municipalities. Prof. F. W. Coker of Ohio State University was reelected secretary-treasurer of the League, and Prof. S. G. Lowrie, of the University of Cincinnati, was elected fourth vice-president. At the third annual meeting of the League of Pacific Northwest Municipalities, Dr. John H. Russell, of the department of political science at Whitman College, was elected secretary of the League. The *Proceedings* of the first annual convention of the Illinois Municipal League, held at Urbana in October, have been published as a University of Illinois bulletin (January 18, 1915, pp. 76). Among the papers included may be mentioned "Municipal Home Rule," by R. M. Story; "The City Manager Plan," by L. D. Upson; and "Municipal Reference Libraries," by J. A. Fairlie.

Dr. Edwin M. Borchard, law librarian of Congress, is editing for the department of commerce a series of reports on various matters of commercial law and civil procedure in France and Germany of interest to American business men and to lawyers engaged in commercial practice dealing with those countries. The monograph on France will deal with the French law of corporations, the organization of corporations, the introduction of American securities into the French market, besides various matters of civil procedure. The monograph on Germany will discuss the law of unfair competition, judicial organization and various matters of civil procedure of interest to American citizens, particularly such matters as depositions, security for costs, powers of attorney, court costs, and similar matters. As an appendix to the monographs a glossary of technical legal terms will be published.

On June 1, Dr. Edwin M. Borchard, law librarian of Congress, will undertake an extended trip through the countries of South America on behalf of the department of commerce and the Library of Congress. For the department of commerce, Dr. Borchard will study various phases of commercial law and civil procedure of interest to American business men and lawyers with customers and clients in South America. On behalf of the Library of Congress, he will study the law and legal literature generally of the Latin-American countries with a view to bringing to the Library of Congress the best legal literature of those countries and to prepare for the publication of a *Guide to the Law and*

Legal Literature of Latin America which the Library of Congress expects to publish some time during the year 1916.

The *National Voters' League Bulletin No. 5*, issued in March (1915) is devoted to an explanation of the way in which control by the House "organization" is perpetuated from one Congress to another, and to outlining desirable changes in the organization and procedure of the House. The most important changes recommended are (1) a rule requiring the committee on rules to report upon every proposed change in the rules; (2) a reduction in the number, and a reorganization, of the standing committees; (3) the election of committee chairmen by the committees; (4) open committee sessions, and publication of records of all committee meetings and the keeping of committee calendars; (5) a budget system; and (6) the electrical recording of votes both in the House and in committee of the whole.¹

The Carnegie Foundation for International Peace has plans on foot for securing the appointment of prominent men in various university summer schools this year to give courses on international relations and world peace.

At the University of Minnesota there have been started a series of essays on current problems and a series containing the results of research in the social sciences. The first political science number in the series of research publications will appear shortly.

Prof. H. G. James, of the University of Texas, is preparing a volume on the *Government of the German States* to be brought out by the World Book Company in the series of government handbooks edited by Prof. D. P. Barrows, of the University of California.

The bureau of municipal research and reference at the University of Texas has established an employment agency feature for city administrative officials, particularly city managers. The object, in brief, is to bring together cities and administrative experts. The work is under the direction of Prof. H. G. James.

Throughout the *Third Annual Report of the Economy and Efficiency Commission* (1915), of New Jersey, there runs a note of disappoint-

¹ Furnished by Prof. P. O. Ray, Trinity College.

ment, almost of discouragement, due to the failure of the last two legislatures to adopt any of the changes recommended in the first two reports of the commission. The commission has not made as exhaustive an investigation as it deems desirable, but until the legislature more clearly defines its policy with respect to the changes already recommended, the commission feels that it is inadvisable to involve the State in the expense necessary to carry on further investigations. The resolution creating the commission in 1912 authorized it to consider and report upon "the best means to consolidate various boards and to broaden the powers in one central board or boards." Confining itself to this restricted function, the commission recommends (1) the creation of a department of conservation and development by consolidation of the State Geological Survey and the following commissions, the Forest Park reservation, the water supply, the state museum, the Washington Crossing Park, and the Fort Nonense; (2) the creation of a department of commerce and navigation to comprise the state harbor, the ship canal, and board of riparian, commissions, the department of inland waterways, and the inspectors of power vessels; (3) the establishment of a department of shell fisheries, to include the bureau of shell fisheries, the State and the Atlantic and Ocean county oyster commissions, and the Shark River commission; (4) the reorganization of the board of health by the substitution of a director of health for five paid commissioners, and the addition of an advisory board, the new board to be given authority to enforce state laws in local districts; (5) a consolidation of the board of assessors and the board of equalization of taxes, the new board to consist of six members; (6) the transfer of the engineers of the board of assessors to the board of utility commission, without, however, interfering with the work of revaluation and assessment now in charge of the engineering corps; and (7) the creation of a department of labor and industry to include the present department of labor and the bureau of industrial statistics. To the legislature of 1915 the commission intends to submit a further report as to suggestions and plans for the continuation and completion of its work.²

The bill which was prepared by the Minnesota economy and efficiency commission and introduced in the legislature of that State is reported to be dead for the present, but an interim committee has been appointed to report a bill for the next session.

² Prepared by P. Orman Ray, Trinity College (Connecticut).

The Illinois efficiency and economy committee, the work of which has been directed by Prof. J. A. Fairlie of the University of Illinois, has made its report to the general assembly of that State (Urbana, 1915, pp. 80). After sketching the defects of the present arrangements, the report outlines the proposed plan of the commission of reorganizing the state administration into a small number of compact departments. The more detailed investigations of the various divisions of the state administration are published as appendices to the commission's report. They are as follows: "Revenue and Finance Administration," by J. A. Fairlie; "Charitable and Correctional Institutions," by J. W. Garner; "Educational Administration," by J. M. Mathews; "Labor and Mining Agencies," by W. F. Dodd; "Agricultural Agencies," by J. W. Garner; "Public Health Administration," by J. M. Mathews; "The Accounts of the State," by G. E. Frazer; "Classification of Accounts for Correctional Institutions," by S. Bell; "Supervision of Corporations," by M. H. Robinson; "Public Works," by C. O. Gardiner; "Military Administration," by Q. Wright; "Civil Service Laws," by A. C. Hanford.

The *Report of the Pennsylvania Economy and Efficiency Commission* (December, 1914), indicates that there are 5152 positions in the state service, of which 1168 were created by statute; 2752, "by legislative appropriation," and 1232 are "contingent or temporary positions." Legislation is recommended "creating and fixing the salary of every position in every department," and the discontinuance of the practice of creating positions "simply by increasing appropriations." The most important recommendations include the enactment of a civil service law to "control state positions," to be administered by a "state board of examiners;" extensive river and harbor improvements at state expense at Philadelphia and Pittsburgh; changing the election of the governor from the even to the odd-numbered years; the creation of a department of justice, conservation department, a state tax commission, a state board of public property; also a publicity bureau, since "it does not become a Commonwealth as great as Pennsylvania to forge ahead steadily in silence."

The other principal points covered by the report may be briefly summarized. Legislation is recommended to provide (1) for the retirement on half-pay of superannuated state employees; (2) for "combining of offices whenever their duties are compatible and providing one salary

for all services;" (3) for the creation of a commission to recommend a uniform system of accounting and bookkeeping for all departments of the state government; (4) for a "semi-monthly pay system" for state employees, and the payment of salaries of departmental officials and those connected with state institutions by one system of checks issued by the treasury department, to replace the present system of individual departmental or institutional checks; (5) for monthly, instead of quarterly, allowances for state institutions; (6) for authorizing the state board of education to reorganize the department of public instruction, and for raising the question of vocational education "to the position it deserves in the educational system of the state;" (7) for giving the superintendent of printing and binding "direct supervision over the printing and binding furnished for all state institutions;" (8) for the abolition of the statutes-at-large commission, of the elevated and underground passenger railways board, the duties of the latter to be transferred to the public service commission, of the board of property with transfer of its duties to the commissioner of forestry, of the commission of soldiers' orphan schools with transfer of duties to the state board of education, and of the board of agricultural instructors and demonstrators; (9) for the transfer of the dairy and food division and the livestock sanitary board from the department of agriculture to the health department, and for extending the jurisdiction of the livestock inspectors over retail as well as wholesale butchers and meat dealers; (10) for the consolidation of the board to license private bankers, the board of public accounts, the board of revenue commissioners, and the sinking fund commission into one body to be called the "revenue and finance board," consisting of the auditor general, the commissioner of banking and the attorney general.

An appendix to the report consists of a useful, though incomplete, tabulation of officials connected with the state departments together with their respective salaries and references to the legislative acts relating to each position. In spite of many shortcomings, chief of which perhaps is the absence of any suggestion of budgetary reform, the report contains many recommendations which deserve adoption, especially if the State of Pennsylvania is to merit the commission's flattering compliment of being "more progressive on sane lines" of legislation than any other State and "the leader in everything that is for the best interests of all her people."³

³ Contributed by P. Orman Ray, Trinity College (Connecticut).

The second volume of the publication entitled *Guerre de 1914, Documents Officiels, Textes Legislatifs et Réglementaires*, mentioned in the February number of this REVIEW has appeared (Paris, Dalloz, 1915). It covers the documents from October 15 to January 1. The Oxford University Press has issued a series of pamphlets designed to furnish a background for the study of the European war. Among the titles thus far issued may be mentioned *Austrian Policy Since 1867*, by M. Beaven, and *Italian Policy Since 1870*, by K. Feiling. *Der Deutsche Krieg, Politische Flugschriften*, edited by E. Jaechh (Stuttgart, Deutsche Verlags-Austalt), is the title of a similar series being issued in Germany. Among the numbers in the series are: *Warum es der Deutsche Krieg ist*, by Paul Rohrbach; *Deutschland und Frankreich*, by Friedrich Naumann; *Deutschland und der Islam*, by K. H. Becker; and *Deutschlands Weltkrieg und die Deutschamerikaner*, by Hermann Oncken. The *Diplomatic Correspondence Respecting the War*, published by the French Government, usually known as the French Yellow Book, has been reprinted by the American Association for International Conciliation in its bulletins nos. 87 and 88 for February and March, 1915.

Columbia University has recently issued as volume 58 of the *Studies in History, Economics, and Public Law* a work of 683 pages by J. G. de Roulhac Hamilton on *Reconstruction in North Carolina*. A portion of this study was privately printed as a doctoral dissertation in 1906. The volume deals with every phase of politics in North Carolina from 1860 to 1876. It is of the same general scope as Garner's *Reconstruction in Mississippi* and Fleming's *Reconstruction in Alabama*. In some respects North Carolina offers a more interesting field than either of the States just mentioned because of the recognition by President Johnson in the early stages of reconstruction of the former Whigs, who were still strongly opposed to the Democrats. The volume is based on a careful and exhaustive study of the sources. It is clearly and interestingly written, and is in every way a valuable contribution to American history.

The Neale Publishing Company has issued a volume entitled *The Facts of Reconstruction*, by John R. Lynch. This volume is largely a personal narrative by one of the cleverest of the negro leaders who came into prominence during the period. The author was a member of the Mississippi legislature, speaker of the house, and member of Congress and later fourth auditor of the United States treasury. The

volume is well written and interesting, but appears to be based entirely on the author's impressions and recollections. It is an avowed defense and justification of the congressional plan of reconstruction.

Houghton, Mifflin and Company have issued, in two handsome volumes, *The Life of Rutherford Birchard Hayes*, by Charles Richard Williams. President Hayes has usually been regarded by the American people as a gentleman of amiable disposition but second-rate ability, who attained the presidency as a result of general "availability" rather than of special preëminence. To take as a subject a man who has been regarded as distinctly commonplace and to write about him two volumes that hold the reader's undivided attention from cover to cover is a literary achievement of no mean order. Even Hayes's military experience is made interesting, and the sincere and straightforward accounts of his political career, taken from his diary and letters, win the confidence and sympathy of the reader. The volumes are eulogistic in the extreme, and the reader has to keep reminding himself constantly that Mr. Williams has on all the controverted points in Hayes's career made large omissions of documents and facts which he might find it difficult to explain. The volumes are, nevertheless, a most welcome addition to the political literature of the period which they cover, particularly the years 1876-1880.

The Macmillan Company has issued a volume on *Abraham Lincoln* by Rose Strunsky. The writer prefaces her volume with the statement that so far "we have had no life written of Abraham Lincoln worthy of that great man," and she undertakes the rather ambitious task of filling that need. There is absolutely nothing new in the book except her point of view, and that is not easily stated in a few words. Her main thesis seems to be that "not slavery but property in land was the real cause of the Civil War," and that Lincoln was the typical small homesteader who objected to slavery "only because he objected to the large landlord." This rather interesting thesis is repeatedly asserted throughout the volume but nowhere clearly demonstrated. The volume is full of errors, and fails to show any real grasp of American history.

A short life of Millard Fillmore by William Elliot Griffis has been published by Andrus and Church of Ithaca, New York. The volume is laudatory but on the whole colorless, and for the student of American politics it possesses little interest.

Readings in Political Philosophy, by F. W. Coker (New York, The Macmillan Company, 1914, pp. xv, 573) is a group of selections from the writings of about twenty of the most important political thinkers from Plato to Bentham. To each set of selections the editor has prefixed a brief introduction indicating the setting and place of the particular author in the history of political thought. Further reading on each topic is facilitated by the "selected references" appended to each chapter. The aim of the editor has been to give rather extensive selections from a few of the most important authors rather than briefer selections from a wider range of writers. Teachers of classes in political philosophy who have hitherto been compelled to rely largely upon historical and expository treatises will find the volume a convenient means of sending their students directly to the sources. The selection of the authors and of the writings of each particular author seem to have been well done in most cases, and some selections are now made available in English form for the first time. It is to be hoped that the success which the present volume deserves will induce the editor to prepare and bring out later a volume of selections covering the writers since Bentham.

A Decade of American Government in the Philippines, 1903-1913, by David P. Barrows, professor of political science in the University of California (Yonkers, World Book Company, 1914, pp. xiv, 66), was prepared by the author as an additional chapter to the third (1914) edition of his larger work on the *History of the Philippines*, first published in 1903. It is "separately printed for the convenience of those desiring a brief historical review of the events of the last ten years." The author briefly summarizes the political, administrative, material, economic, and educational developments of the decade, and brings the narrative down to the beginning of Governor-General Harrison's administration. The author recognizes but two probable futures before the Philippines—"either a continuance of the policy of the last decade, or the complete abandonment of the islands to their own support" (p. 66). He feels that the results of American occupation constitute a "signal triumph" and is opposed to the abandonment of the islands by the United States. The author's account of events and conditions is based upon his actual experience in the islands, as head, first of the bureau of non-Christian tribes, and later, of the department of education.

An Introduction to the Study of Government, by L. H. Holt, of the United States Military Academy (New York, Macmillan Company, 1915, pp. x, 388), is an attempt to write a textbook in government upon somewhat new lines. It undertakes to set forth the general principles underlying the principal modern governments, combining a certain amount of political theory with reference to concrete practice. In these respects it follows Garner's *Introduction to Political Science*, but is somewhat more elementary. The book covers such an extensive field that most of the topics receive only brief and fragmentary treatment and great condensation is necessary throughout. Illustrative citations and documents are added, however, at the end of each chapter and in the appendix, which may be used as source material. The book will doubtless prove useful as a text in classes which have only a comparatively short time to devote to the whole field of government.

The *Gesetz- und Verordnungsblatt für die okkupierten Gebiete Belgiens*, issued by the German government, exemplifies the methods which the Germans have adopted in applying typically Prussian rules and regulations to Belgium. It is also interesting as an example of legislation of an emergency character enacted by a belligerent to the government of enemy territory under military occupation. It is difficult in this country to obtain official texts of these laws and ordinances, and we therefore welcome their publication in a small volume entitled *German Legislation for the Occupied Territories of Belgium*, edited by Charles H. Huberich and Alexander Nicol-Speyer (The Hague, Martinus Nijhoff, 1915, pp. viii, 108). The volume embraces nos. 1 to 25 of the *Gesetz- und Verordnungsblatt* from September 5 to December 26, 1914, and not only the German but also the corresponding French and Flemish texts are published.

Among the announcements of forthcoming books which may be of interest to political scientists are the following. The Yale University Press: *Bracton: De Legibus et Consuetudinibus Angliae*, edited by George W. Woodbine; *Undercurrents in American Politics*, by Arthur Twining Hadley; *Municipal Citizenship*, by George McAneny; Sturgis and Walton Company: *The Orthocratic State*, by John Sherwin Crosby; John Lane Company: *War and World Government*, by Dr. Frank Crane; Mitchell Kennerley: *The Great War, The Second Phase*, by Frank H. Simonds; Columbia University Press: *Law and its Administration*, by Harlan E. Stone; The Macmillan Company: *America and her Prob-*

lems, by Paul Benjamin D'Estournelles de Constant; *American Municipal Progress*, new and enlarged ed., by Charles Zueblin; Houghton, Mifflin Company: *The Diplomacy of the War of 1914*, Vol. I, *The Beginnings of the War*, by Ellery C. Stowell; Ginn and Company: *Hague Arbitration Cases*, by George G. Wilson; Duffield and Company: *The Emancipation of the American City*, by Walter Tallmadge Arndt; A. C. McClurg and Company: *Peace Insurance*, by Richard Stockton, Jr.; *Germany's Isolation, an Exposition of the Economic Causes of the War*, by Paul Rohrbach, translated from the German by Paul H. Phillipson; D. Appleton and Company: *The City Manager*, by Harry Aubrey Toulmin, Jr.; Henry Holt and Company: *History of American Diplomacy*, by Carl Russell Fish; Century Company: *European Police Systems*, by Raymond B. Fosdick; Methodist Book Concern: *The Essence and the Ethics of Politics*, by S. Arthur Cook.

Among the French works dealing with the war, which are announced as in preparation are the following: *Les Causes de la Guerre Européenne*, by André Chéradame (Plon, Nourrit et Cie); *Les Finances de Guerre de l'Angleterre*, by Gaston Jèze (Giard et Brière); *Les Luittes des Nations*, by Arthur Bochard (Giard et Brière); *Les Sources de l'Histoire de la Guerre Européenne*, by Albert Maine and Alfred Percire (Ed. Champion).

Principles of Taxation, by Hastings Lyon (Boston, Houghton, Mifflin Company, 1914, pp. 133) is the ambitious title of an unpretentious but useful work dealing with such subjects as the nature of taxes, on the objects of taxation, the assessment and collection of taxes, the separation of state and local revenues, the taxation of corporations, and the single tax. The book, as the author states, is the outgrowth of a report which he made, as counsel, to the taxation committee of the Investment Bankers Association of America. As might be expected, the author objects strongly to taxation of the "corporate excess" of corporations. In spite of the sources from which it comes, however, the book betrays but slight traces of partisanship. The limited dimensions of the volume confine the author to a discussion of the various topics from a merely fiscal point of view, and the ultimate social effects of taxation receive little or no consideration.

The Democracy of the Constitution, by Henry Cabot Lodge (New York, Scribner, 1915, pp. 297), consists of a series of occasional papers and

addresses, rather loosely strung together. The most important are the five dealing with the "Democracy of the Constitution" viz., "The Public Opinion Bill," "The Constitution and its Makers," "The Compulsory Initiative and Referendum, and Recall of Judges," "The Constitution and the Bill of Rights," and "The Democracy of Abraham Lincoln," and the two biographical papers on John C. Calhoun and Thomas B. Reed. The papers are written in a popular style, and take a conservative, if not reactionary, attitude toward such devices as the initiative, referendum and the recall of judges.

Among the numerous works which have recently appeared relating to the political philosophy behind the European war, one of the most useful is *The Confessions of Frederick the Great, together with the Life of Frederick the Great*, by Heinrich von Treitsche, edited with an introduction by Douglas Sladen and a foreword by Geo. Haven Putnam (New York, G. P. Putnam Sons, 1915, pp. xxv, 208). More than half of the volume is devoted to the "Confessions," to which the editor traces the origin of the "gospel of inhumanity" preached by von Bernhardt in his *Germany and the Next War*. *The Life of Frederick* by von Treitsche is added as affording an interesting commentary on the "Confessions."

Although written before the outbreak of the World War, *The Pan-Angles, A Consideration of the Federation of the Seven English-Speaking Nations*, by Sinclair Kennedy (New York, Longmans, Green and Company 1914, pp. 244), has a bearing upon one phase of that conflict. The author predicts the inevitable conflict between Anglo-Saxon civilization and that of other races and maintains that, as preparation for such a struggle, the English-speaking peoples should form a federation. The seven so-called "nations" are the British Isles, the United States, Canada, Newfoundland, Australia, South Africa, and New Zealand. The author points out the many institutions and elements of civilization which the seven "nations" have in common, and which warrant their drawing more closely together into a federation. Although perhaps, not fully appreciating all the difficulties involved, the author makes a very strong argument for the feasibility of such a federation.

Another volume in the series of essays of the late William Graham Sumner, edited by Albert G. Keller, has been brought out by the Yale University Press under the title *The Challenge of Facts and Other Essays*.

(New Haven, 1914, pp. 450). The essays, some of which are hitherto unpublished, are characterized by keen insight and felicity of expression. Among the more important, in addition to the title-essay, may be mentioned "The State as an Ethical Person," "Speculative Legislation," "Republican Government," "Democracy and Responsible Government," and "Advancing Social and Political Organization in the United States." It is the intention of the editor and publishers to complete the series later by the publication of a fourth volume of Sumner's essays.

The Common Law and the Case Method in American University Law Schools, by Prof. Josef Redlich, of the University of Vienna, is the title of a bulletin recently issued by the Carnegie Foundation. The bulletin embodies the results of a special investigation for which the distinguished Austrian made a visit to the United States. Professor Redlich is greatly impressed with the extent to which the study of law has developed in American schools. He finds that, on the whole, the case method of instruction has been eminently successful, and thinks that its success lies in the fact that it enables the student to find out what the law is rather than what it ought to be, and is better adapted to the purpose and subject-matter of legal instruction in this country. He maintains, however, that the case method may be overdone, and feels that it should still be combined to a certain extent with the lecture method. There is included in the bulletin also a sketch of the development of law and legal instruction on the continent of Europe.

Callahan, James Morton: *Semi-Centennial History of West Virginia, with Special Articles on Development and Resources*. (Semi-Centennial Commission of West Virginia, 1913. 593 p.) The semi-centennial commission of West Virginia is to be congratulated on its decision that the celebration "should be given a practical form in some enterprise of permanent value." This volume, which is the outcome of that decision, is divided into two nearly equal parts in the first of which Mr. Callahan presents the political and economic history of the State in some detail. This gives evidence of much scholarly work with extensive materials, but it is greatly to be regretted that "footnote references to authorities, which appeared in the first draft of the author's manuscript, have been omitted to meet limitations of space." The extensive bibliography is a mere alphabetical list of books and articles without annotations or classification and the index, which covers only the

history proper, is inadequate. The second half of the book is made up of special articles contributed by various writers. Thirteen of these deal with economic subjects and seven with political institutions. Then there is a series of five articles on as many religious denominations and one article each on medicine, journalism, education, and literature. The editor contributes a valuable article on "The Study of Local History;" then follows an account of the semi-centennial celebration; and the book closes with an article on the state seal. Little excuse can be seen for the inclusion of these special articles in the volume, other than the desire to drag in as many contributors as possible. If the information which they contain is essential to a well-rounded history of the State, it should have been incorporated in the text; if not, the articles should have been published separately, if at all. The make-up of the volume is crude and the illustrations are of the sort that one expects to find only in blue-books and similar state publications.⁴

German World Policies (New York, The Macmillan Company, 1915, pp. xi, 243) is the title given by Dr. Edmund von Mach to a translation of Paul Rohrbach's *Der Deutsche Gedanke in der Welt*, published in 1912. The translator chooses to paraphrase the title of the original, owing to the fact that "the German word *Gedanke* connotes a greater wealth of political thoughts than the English word *idea*." Possibly *influence* would have been a better term to use than *policies*, since the author defines the German idea as "the ideal force of Germanism, as a formative power in relation to the present and future happenings of the world."

The underlying assumption of the book is that "we (Germans) have been placed in the arena of the world in order to work out moral perfection, not only for ourselves, but for all mankind." The spread of the German idea is, we are told, essential to the maintenance of Germany's power, for without foreign markets, the natural development of Germany must cease and she will be unable to shape the culture of the world. After travelling around this circle it is difficult for the reader to determine whether expansion is necessary in order to spread the German idea or the idea is to be the necessary forerunner of expansion. In the chapters that follow the author frankly admits that Germany is handicapped in the struggle for expansion both by the historical facts which have delayed the achievement of her national existence and weak-

• Contributed by Prof. S. J. Buck, University of Minnesota.

ened its internal unity and by the further fact that class distinctions and a narrow parochialism have prevented the average German from thinking imperially. The author speaks very frankly of certain national faults of his countrymen and admits that before Germany can hope to win moral conquests in the world she must overcome the distrust with which democratic nations regard the reactionary government of Prussia. This admission and the confession that there exists in Germany an offensive superiority and an awkwardness of behavior which are constantly putting us at a disadvantage" and that the North German character is "incapable of freely understanding the moods of other nations and of living in friendly harmony with other people" will make the reader all the more ready to concede the truth of the author's statement that the progress of German abroad can be explained only by her "exact and conscientious labor" and her "remarkable diligence."

In her endeavor to become "co-mistress of the culture of the world" Germany must expect to meet with opposition from England who is at present sole mistress of this culture. Hence the need on the part of Germany of a navy "strong enough to endanger England's superior position on the sea, if she should attack us, even if the immediate outcome should be advantageous to her." In reply to Mr. Churchill's statement that the English "have never had any thoughts of aggression," the author points to the many contrary expressions of opinion in England in which the German fleet is spoken of as a distinct menace to England.

The book on the whole is a statement in moderate language of Germany's need of expansion and of the changes in her national policy required to effect it. It is unfortunate that the translator has seen fit to suppress a "few paragraphs" which he thought might be misunderstood. When a nation is pleading its cause before the court of the world any suppression of evidence arouses suspicions which are worth any number of misunderstandings.

**REPORT OF COMMITTEE OF SEVEN ON INSTRUCTION IN COLLEGES
AND UNIVERSITIES¹**

In its report presented a year ago the committee offered some data based upon replies from 458 institutions. During the current year the committee sent out a separate questionnaire through the bureau of education. From the replies received and information previously gathered, the committee has prepared a record of courses offered in 531 institutions. In all but a few cases the record has been approved by an officer of the college or university and represents correctly the courses announced or given in each institution.

Hours are recorded in the revised table for the following subjects:

1. American government:
 - a. National;
 - b. State and local;
 - c. Municipal.
2. General political science (courses based on volumes such as Garner, Leacock and Gettell).
3. Comparative government.
4. English government.
5. International law.
6. Diplomacy.
7. World politics.
8. Jurisprudence or elements of law.
9. Commercial law.
10. Roman law.
11. Administrative law.
12. Political theories (history of political thought).
13. Party government.
14. Colonial government.
15. Legislative methods and legislative procedure.

¹ The committee desires to acknowledge its indebtedness to the following men for reports on the teaching of political science in particular States, and for valuable assistance in the preparation of this report: C. S. Potts, University of Texas; W. J. Shepard, University of Missouri; W. M. Hunley, University of Virginia; Jesse S. Reeves, University of Michigan; Carl Christophelsmeier, University of South Dakota; A. B. Hall, University of Wisconsin; Clyde L. King, University of Pennsylvania; J. E. Boyle, University of North Dakota; H. A. E. Chandler, University of Arizona, and F. W. Coker, Ohio State University.

For a partial report on colleges and universities consult the *Proceedings of the American Political Science Association* for 1913, pp. 249-266.

16. Current political problems.
17. Municipal corporations.
18. Law of officers and taxation.
19. Seminar.
20. Additional courses.

The reports secured from these institutions were used as a basis for a classification of colleges in accordance with the number of hours announced in political science. It is recognized of course that the basis of hours announced is not an accurate foundation to rank institutions and it is clearly apparent that some schools are overrated in the list because of the fact that a large number of courses are announced and relatively only a few are given in any one year. However, it is evident from data available that only a few institutions in a tabulation of this sort are incorrectly rated and whenever possible the committee has aimed to avoid a manifestly wrong impression by the aid of explanatory notes. The basis of classification is as follows:

First Class

(Hour in this table is used to signify the number of lectures or recitation periods allotted to each subject).

- A. Comprises universities announcing over 1200 hours.
- B. Comprises colleges and universities announcing 700 to 1200 hours.

Second Class

- A. Colleges announcing over 400 to 700 hours.
- B. Colleges announcing over 200 to 400 hours.

Third Class

Colleges announcing less than 200 hours.

Fourth Class

Colleges announcing no courses.

Finally a list is appended of institutions which failed to respond to the inquiries of the committee. The table presented on this basis is as follows:

- First Class: A, 6; B, 17.
Second Class: A, 37; B, 117.
Third Class, 224.

Fourth Class, 111.

Offers work, hours not reported, 19.

Total reporting, 531.

No report, 99.

According to this classification it appears that out of the total 531 institutions only 187 give recognition in their curricula to political science to an extent that regards the subject as of sufficient interest and value to provide for a department of instruction. In practically all of the remaining institutions only a few courses are offered annually or none at all are included in the curriculum. While the institutions comprised in the first and second classes undoubtedly include a majority of the really strong and well endowed colleges and universities it is nevertheless true that the third and fourth classes contain many institutions of large size, reputable standing, and extensive resources in which the subject of government has been wholly neglected or has received inadequate attention. The committee gave particular emphasis to this neglect in its annual report a year ago. It needs only to be added now that reports from a larger number of institutions show a greater deficiency in this regard than was then noted and serve to support the judgment that far too few of our higher institutions have recognized the high responsibilities of training either for citizenship or for the public service.

RECOMMENDATIONS FOR THE IMPROVEMENT OF THE TEACHING OF POLITICAL SCIENCE

The committee presented at the annual meeting in December, 1913, a few proposals in the way of suggestions toward improvement which were offered in order to aid in the formulation of recommendations to be embodied in a final report. These recommendations were submitted to representatives interested in the teaching of political science with a request for criticisms and suggestions. In the many replies received it is gratifying to report that the recommendations are, as a rule, heartily endorsed. Criticisms were made in a few cases on the basis of which the committee suggests certain revisions and modifications in the proposals submitted a year ago.

It is well to emphasize at this time that the committee has aimed in all of its conclusions to gather and formulate the consensus of opinion among those who are vitally interested in the progressive improvement of political science instruction. Every effort has been made through questionnaires, correspondence and every available avenue of infor-

mation to gauge correctly and present the mature judgment of those qualified to speak from experience. It is inevitable that any small group such as a committee will view matters from an angle which from other viewpoints may receive different interpretations. But no pains have been spared to eliminate personal views and predilections and to present in such conclusions as are offered the clearly formulated opinion of representative groups of instructors.

In line with its efforts in this direction the committee submits some modifications proposed relative to the tentative recommendations of a year ago. Taking the recommendations in turn:

1. That for the purpose of its report the committee considers the following courses as comprising in the main, the scope of political science.

In the list of subjects offered December, 1913, no effort was made to organize the courses on any particular principle of classification. Some criticisms were received on account of this failure of classification. To meet these criticisms and in order to facilitate the systematization of courses in the subject, the following rearrangement is proposed:

A. Descriptive and historical

1. American government:
 - a. National;
 - b. State and local;
 - c. Municipal.
2. Comparative government.
3. Party government.
4. Colonial government.
5. Diplomacy.

B. Theoretical

1. Political Science (introductory course).
2. Political theories and history of political literature.

C. Legal

1. Constitutional law.
2. Commercial law.
3. Elements of law and jurisprudence.
4. Roman law.
5. International law.

D. Special Courses

1. Legislation and legislative procedure.
2. Public administration and administrative methods.
3. Judicial administration; the organization and functions of courts of justice.²

2. That courses in political science be separated from courses in history, economics, and sociology and that colleges aim to have at least one instructor giving full time and attention to this department of instruction.

The committee desires to reaffirm this recommendation and to urge again the necessity of establishing a separate department of political science. It is a pleasure to report that a marked tendency in this direction is noticeable among the larger colleges and universities and it is to be hoped that the time is not far distant when political science will have a recognized place and a reputable standing along side of older inhabitants of the college curriculum.

There is a justifiable revolt against the seemingly endless growth of departments and the sometimes unwarranted tendency to add highly technical and advanced courses in a department. But if there are any good reasons for not according an independent status to courses in government and law these reasons have not been forthcoming. That those whose business it is to teach political science almost invariably favor the expansion of their departments is only to be expected. The encouraging thing is that men of affairs in business and government, as well as many in other avenues of life, join with the specialists in political science in urging upon administrative authorities the necessity of more and better courses in government.

Fortunately the time has passed when the devotees of this branch of learning must beg for scant courtesies at the hands of those who guard the avenues of intellectual advance. The one-time reputable study of politics as in the days of Aristotle has come to its own. And the liberalizing culture of the study of political literature and public affairs as well as the service rendered by departments of government, have not only restored the science of politics to its former

² In the preparation of this table the committee is especially indebted to Professors Shaper of the University of Minnesota, and Freund of Chicago for important suggestions. This arrangement is offered as a beginning toward standard and systematic classification of courses in political science. Recommendations will be greatly valued by the committee.

place but have also called forth new avenues of growth, new fields of endeavor. A prestige which will not long be unnoticed in any school of learning which values its function as an educative force in a democracy bids fair to place the study of government on a firm footing as an indispensable feature of every college curriculum.

3. That a full year's course in American government be given as the basic course for undergraduates.

A summary of attendance in courses in 150 institutions shows that American government is far in the lead as a basis for advanced work in the department. Comparative government, introductory courses in political science and international law are the only subjects which serve to introduce students to subsequent work. But the three of these as offered in introductory courses are not selected in as many institutions as American government and are given to a considerably smaller number of students. It may be taken therefore as rather clearly determined that American government shall be the basic course. This course is usually elective and is open only to students of sophomore standing.

A matter which is receiving some attention in various quarters is whether this or another course in government ought not to be open to freshmen. While a few schools have admitted freshmen to the course and while there are some strong reasons in favor of this move the prevailing sentiment for the present, at least, favors the requirement of a year's work in college. The acquirement of a certain facility in college methods of study and a slight maturity of judgment which comes with an additional year's development are requisites for anything like effective work in dealing with the underlying principles and issues of American government.

The present standard of instruction could of course be changed so as to adapt the material and methods to meet the needs of the freshman state of mind. But in view of the fact that most of the large high schools are now giving a half year or a year to this subject on somewhat the same plan as would be necessary in a first year college course it seems better from the standpoint of the student as well as the department to defer the introductory course until the second collegiate year. In States where but few students have an opportunity to pursue the study of civics in high schools there is more cogency to the argument in favor of a freshman course.

When political science instruction begins in the sophomore year

the question arises whether any course shall be made a prerequisite for the election of the subject or whether a certain number of credits alone shall be sufficient. The general rule does not favor any prerequisite. Some institutions however require the selection of a course in history whereas others strongly advise the taking of a preliminary course in this subject. A few schools are offering to freshmen with a fair degree of success an introductory course to the Social Sciences—a kind of gateway course to economics, sociology and political science. No satisfactory text or handbook for this type of course has yet been prepared. In fact it is doubtful whether such a text is within the limits of practicability on account of the diversity of fields and the difficulty of condensing the underlying principles of any one of the above subjects. For the present such a course depends too much upon the individual predilections of the instructor and is likely to comprehend an effervescence of principles which fails to meet the approval of any of the three departments concerned.

The most noteworthy objection to the present arrangement and one that has some urgent and influential advocates is that only a small percentage of the student body can elect this course under the conditions which prevail in the selection of subjects and that the majority of those who do choose the course never have an opportunity to continue the study of government. Consequently it follows that of the small percentage of those who strive to gain some knowledge of governmental affairs only a very minor portion ever go far enough to get any knowledge of foreign governments. Hence the present system is designed to foster an inordinate provincialism which has been one of the banes of our national life. If the citizen-to-be has an opportunity to take but one year's work in government it is still a very pertinent question whether this one course ought not to be partly comparative government or whether the study of American government ought not to be broadened by constant comparisons with European political systems. The committee is informed that the latter type of course is being given in several institutions and it may be that a kind of course will soon be developed which will meet this objection. At least the experiment is awaited with interest. In the meantime, other ways must be devised for attracting to the study of government a greater percentage of students and for bringing the ways and methods of the operation of foreign governments to a larger number of those entering this field of study.

4. That the scope of comparative government be enlarged to include a study of the self-governing colonies, South American republics and important Asiatic nations.

To the comments on this proposal little need be added except to reiterate the observation that the scope of the ordinary course in comparative government should not be expanded to cover the above mentioned countries. The recommendation of the committee was evidently misunderstood on this point and naturally called forth some pertinent criticisms. The suggestion was offered rather in the direction of separate courses which might be given in alternate years and might introduce matters of even greater interest and value than much that now passes under the designation comparative government. Comparative government as usually taught following closely the texts now in use comprises many details and minute matters of fact which may give good exercise to the memory but which can have little if any relative value for the purposes of pertinent and useful comparisons with American political practices. On account of these unnecessary facts other matters from which direct and effective comparisons may be made are ruled out or receive mere passing notice. To meet this difficulty some instructors treat comparative government not by separate countries but only in connection with a consideration of such topics as the parliamentary system, civil service, administrative methods and judicial control over legislation.

There does not seem to be any good and sufficient reason why the constitutions of Switzerland, Germany and Norway should be comprised in this field and the constitutions of Canada and Australia omitted. Nor does it appear altogether reasonable that political affairs in Spain and Portugal should be urged as a necessary part of the knowledge of comparative institutions and that the governments of Brazil, Argentina and Chili should continue beyond the ken of the mental horizon of the specialist in politics.

The introduction of courses in Federal Government including a comparison of the constitutions of Canada, Australia, South Africa, Switzerland, Germany and the United States and the inclusion of the self governing colonies in a study of the English parliamentary system is rapidly meeting the situation to which one phase of this recommendation referred. Similarly courses in Latin-American institutions and world politics are partially at least filling the void in the study of political affairs which a limited range of view had too long kept from careful consideration.

5. That an effort be made to redistribute the emphasis in courses in government so as to give less attention proportionately to governmental structure and legislation and to devote more time and emphasis to administrative methods and law enforcement.

One of the points of controversy in the making of schedules of courses in political science is to determine the relative amount of time and emphasis to be given to constitutional and political history, to the legal framework and organization of government and to the study of government as a functioning organ. Answers to an inquiry submitted to instructors, although almost invariably based upon rough estimates, indicated that almost twice as much time is given to the structure of government as to constitutional history, and that as a rule the study of functions or "physiology of politics" receives more attention than legal framework and constitutional history combined.

There is evidently a marked tendency in both colleges and universities to shift the emphasis from constitutional history (this subject being left frequently to the department of history or dropped entirely) and governmental organization to the analysis and consideration of government in operation.

The following comments are typical:

Beloit: Greatest stress on functions, much effort made to show real vital activities of the present and how they rather than constitutional framework disclose real government.

Columbia University: Within the past few years there has been a very marked emphasis placed upon the actual workings of government as compared with constitutional theory or constitutional history.

Grinnell College: We place the emphasis decidedly on governmental functions and activities. The historical side of our work receives the least consideration. Government as it is and as it promises to be is what we seek to understand.

Ohio State University: The tendency in successive rearrangements of courses is to lay more stress upon governmental functions and activities.

University of Michigan: While I cannot give divisions of time, I stress functions and activities rather than framework, though the latter is absolutely necessary to an understanding of the former, i.e., a knowledge of anatomy should precede that of physiology or pathology.

University of Wisconsin: In all advanced courses a knowledge of constitutional and institutional history and development is assumed, and the functions, activities and forces are discussed. In the more

elementary courses the emphasis is on constitutional history and strongly on legal framework of government.

Among all of the replies only two instructors favor greater emphasis on theory than is now given. But protests are beginning to arise that the well marked tendency to replace the study of foreign governments and political theory with a minute study of government in operation, and with an analysis of all the details of local government will tend to develop provincialism to the extreme and will leave the individual enmeshed in a mass of petty facts without chart or guide to indicate a path through the endless changes of an ephemeral political society. Instructors, it is maintained, may well stop to think whether the pendulum is not about to swing too far in the direction of glorifying petty details and neglecting, if not forgetting, the principles and foundations on which governments may endure and prosper. These principles are indeed difficult, if not well nigh impossible, to discover, but there are those who think that the quest is more worthy of attention than is the search for the latest minimum wage law or for proposed regulations of dance halls.

Moreover, protests are beginning to arise from other quarters and the query is beginning to be raised whether the time has not come to question seriously the advisability of stressing in the introductory work in political science—theories of government, law and the State which remain as a heritage of the past and against which leading lawyers and jurists are waging a relentless warfare. Too much of political science in the United States like a great share of our legal thinking has been based upon the logical but narrow and impractical political doctrines of Austin. It is unfortunate that many who begin the study of politics are lead in the way of the formal studies of the Austinian school of jurisprudence and fail to profit by the contributions made by the philosophical jurists as well as by the more practical views of the schools of sociological jurisprudence. The translation of the *Modern Legal Philosophy* series under the auspices of a committee of the Association of American Law Schools will render available some of the much neglected literature in this field. A study of political and legal theories would indeed be more profitable and more worthy of retention in the curriculum if it did not stop with Montesquieu and neglect the more vital movements in continental legal thought. Such a study would as a rule be more useful to the student and would furnish a better justification for the time devoted to introductory studies in government.

Finally the committee desires to reiterate its judgment of a year ago relative to the urgent need of more attention to administrative methods and law enforcement. Not only is there a deplorable lack of advanced courses on such extremely important subjects as are comprehended in administrative rules and practices and on the organization and functions of courts of justice but there is also no elementary text which gives anything like adequate treatment of these matters and many neglect them entirely with the exception of a mere outline of the organization of courts. We can expect a continuance of bungling and ineffective results in the enforcement of law as long as this subject is not made a matter of scientific study by those who administer public affairs as well as those who are concerned therewith. Colleges and universities should at least aim to stress in regular courses and aim to aid more largely than is now the case in gathering data for judicial and administrative reorganization.

6. That instructors in political science encourage students to prepare reports and surveys on actual political conditions.

One of the general charges brought against teachers is the failure to relate the instruction given to the conditions and environment of the students. According to this charge it is the purpose of education to give an interpretation of everything in the realm of nature and thought except the commonplace affairs to be found in the very midst of the school, the home and the community in which the children live. To a certain extent this charge is true as applied to instruction in government. The governments of Europe—the national government and perchance a slight glance at state government have virtually crowded out the study of local police courts, the town hall and county affairs and the myriad problems of local and municipal government. While the botanist, geologist, biologist and chemist have begun to make use of nature's marvelous environment with which each community is endowed the teachers of government have been exceedingly slow to appreciate the priceless heritage of social and political institutions in which each individual is enshrouded. The emphasis on community civics in the schools has begun to introduce a change in perspective and has tended to make the elementary study of government concrete and vital. Legislative and municipal reference libraries and bureaus of research have paved the way for an exceedingly fruitful field for the colleges and universities. A few instructors have appreciated the possibilities of putting students to useful endeavor and at the same time giving them exceedingly valuable training. The

opportunity of turning to advantage some of the hitherto wasted efforts has possibilities which can be only vaguely conceived.

Of course this kind of thing can readily be overdone and the work of the class-room can be easily cheapened by too frequent sociological excursions and holidays. Practical work needs to be specially guarded, sparingly used, and credit should be given under rigorous conditions only which meet the standard requirements of scientific accuracy, completeness and thoroughness. Under such conditions work of this character may be made a valuable supplement and inspiration and may be so directed as to turn to the profit of the community.

It must always be remembered also that investigations and reports of this type although valuable as supplementary exercises cannot replace and certainly ought never to be permitted to diminish the study of foreign governments which alone can overcome inordinate provincialism and give that perspective from which local institutions can be reasonably surveyed and appreciated. The suggestion is not proposed in order to minimize or reduce the present attention given to comparative government or the study of foreign affairs but rather to call attention to a prime method by which a study of our own institutions may be made vitally interesting and socially useful.

7. That departments of political science furnish aid and be in readiness, in equipment and spirit, to render advice to government officials not only in the making and enforcing of laws but also in extending assistance in whatever special fields the instructors in the department are competently equipped.

This recommendation comes directly within the scope of the committee on practical training for public service. For a thorough report on the present status of practical training and for a constructive program in the way of improvement consult the report and publications of this committee.³

SUGGESTIONS FOR IMPROVEMENT OF INSTRUCTION IN POLITICAL SCIENCE

In one of the questionnaires distributed by the committee instructors were asked to give suggestions as to ways and methods by which instruction in government might be improved. Among the suggestions offered were the following:

³ A preliminary report of the committee is to be found in *Proceedings*, pp. 301-356. For further information write Charles McCarthy, Chairman, Madison, Wisconsin.

1. That there be a preliminary course as an introduction to economics, political science and sociology.

2. That the POLITICAL SCIENCE REVIEW be made more definitely a medium of information to keep teachers abreast of important changes in the realm of politics.

3. That a full year be given to the study of American government.

4. That departments establish research bureaus and aim to keep in touch with government in actual operation in townships, cities, counties, State and nation, and that students be trained to study definite problems.

5. That more frequent use be made of newspapers and periodicals for illustrations of the dynamics of government.

6. That texts be prepared which give more emphasis to functions and statistics and deal more fully with state and local government. Good outlines should also be prepared with suggestions for gathering and using concrete material, and for doing observational and practical work.

8. That laboratory work and the assignment of practical problems for student reports should be more largely used by all instructors in political science.

9. That an inquiry be made regarding the educational training, teaching experience and salaries of instructors in political science; an inquiry as to the number of hours they teach other subjects, amount of detail work, grading papers, committee work, etc.; also library appropriations for purchase of books and documents.

10. That better provisions be made for the training of teachers in this subject.

11. That college teaching gives too much emphasis to functions of government before giving adequate knowledge of framework.

12. That much time is wasted in giving highly attenuated theoretical and speculative courses.

13. That much could be gained by standardizing many of the courses and grading them as elementary, advanced and graduate in character. The association should prepare a program of study and text writers should conform to this program instead of allowing the scope and arrangement of courses to be largely determined by the most popular text writers.

14. That civics in secondary schools should be placed on a better basis and broadened so as to include economics and social science.

SOME ADDITIONAL DATA ON COLLEGE INSTRUCTION RELATIVE TO
ATTENDANCE, TEXTBOOKS, AND METHODS OF INSTRUCTION

Attendance in courses

Institutions reporting, 150⁴

<i>Subject</i>	<i>Institutions</i>	<i>Total enrollment</i>	<i>Average</i>
American government.....	120	6107	51—
Comparative government.....	67	2750	41
General political science.....	45	992	22
International law.....	55	1422	26—
Jurisprudence.....	22	753	34
Constitutional law.....	29	1091	38—
Commercial law.....	9	620	69
Political theories.....	11	156	14
Municipal government.....	38	1163	31—
Party government.....	15	473	31
State government.....	3	170	57
		<u>15,697</u>	

Judging by the large number of institutions reporting and the high average of the classes it appears that American government is growing in favor as the basic elementary course in the department. Comparative government shares with American government in favor as an elementary course although less than one-third as many students in a few more than half the number of institutions are reported. The small colleges frequently give an elementary course in political theory. This accounts chiefly for the total of 992 students enrolled in 45 institutions in the subject designated as general political science. Courses in political theory are not as popular with instructors or with students as formerly. When political science was first introduced into the college curriculum the work was almost always begun with a course in political theory. Now the tendency is to give instead practical courses in American government, comparative government, municipal government, etc. But in most of these courses some attention is paid to political theory. Advanced courses in political theory are given as a rule in the universities to small groups of graduate and undergraduate students. Jurisprudence, constitutional law and commercial law are offered chiefly in the universities and usually to large classes.

A subject gaining in popularity and interest is that of municipal government now offered in many colleges and reaching more than

⁴ The majority of schools which submitted reports on attendance were large universities or old and well-endowed colleges.

1000 students in 38 institutions. The growing emphasis upon the study of functions and government in operation will no doubt aid in giving greater prominence to this course. International law ranks third as to number of institutions offering the subject but the total of 1422 students enrolled in 55 schools indicates that with but few exceptions the subject is given to comparatively small classes. The course is offered frequently in alternate years and is as a rule elective with the result that "a relatively small percentage of the students actually elect International Law as a subject of study."⁵ According to the report of the Carnegie Endowment for International Peace in 144 institutions in which international law was taught in 1911-12 only 3646 students were enrolled or only $\frac{1}{3}$ per cent of the students which were enrolled in those institutions.⁶ Judging by the small number enrolled it is a question whether the large total of hours now given to the subject is warranted, and institutions may well be on their guard when outside agencies with large endowments are bringing heavy pressure to add many more courses in the field of international relations.

The total enrollment in eleven subjects, 15,697 in undergraduate courses of 150 colleges and universities indicates that political science is appealing to large groups of students. This enrollment is particularly gratifying because of the fact that courses in the department are almost invariably elective, and as a rule, they are given only to advanced students. The subjects are usually offered in the sophomore, junior and senior years and frequently are open only to juniors and seniors. But there are many evidences to lead to the conclusion that these subjects have not been given the consideration due them. When institutions with several thousand students have from 10 to 20 enrolled in courses in political science, and these are public institutions supported largely by state funds, it leads to the inquiry whether something in the nature of a civic awakening in our educational institutions is not in order. Furthermore the schools reporting constitute a majority of those having strong and well planned courses in political science, and the results would be far less satisfactory if statistics were secured from all of the colleges. It is time that educators at least ask the question whether it is desirable

⁵ Report on the teaching of international law in the educational institutions of the U. S., prepared by the Carnegie Endowment for International Peace, April 18, 1913, p. 6.

⁶ *Ibid.*, p. 29. This report should be consulted for an exhaustive report on the teaching of international law.

that the great majority of college graduates leave their institutions without so much as completing a single course of study devoted to their own political institutions or those of foreign countries.

One of the most neglected phases of this subject in the colleges is the provision for the training of teachers of government. Except so far as all courses are incidentally designed to aid teachers the great majority of schools offer no work whatsoever in the way of preparation for teaching. The subject is included in the schedules of Summer Sessions and Extension Courses, and to a certain extent in departments of education, but is almost invariably combined with history, and as in other instances, civics suffers in the distribution of time remaining when the demands of history have been satisfied. The frequency of the reply that no courses are specially designed for prospective teachers would seem to indicate that the imputation freely brought by educators that college teachers are not interested in instruction is true to an extent that is, to say the least, deplorable.

Textbooks

Courses in political science have been made possible in small institutions and have been improved in large institutions by the recent appearance of good textbooks. An inquiry relative to texts used brought the following results. For American government, Beard's *American Government and Politics with Readings*; Bryce's *American Commonwealth*; Hart's *Actual Government* and Ashley's *Federal State* are the volumes on which the courses are usually based. In most cases Professor Beard's books are used and the other authorities are included in the list of supplementary readings. Courses in comparative government are based upon Ogg's *Governments of Europe*; Wilson's *The State*; Lowell's *Government and Parties in Continental Europe* and *Government of England*; Burgess's *Political Science and Constitutional Law* and Bluntschli's *Theory of the State*. Among the works used as texts in introductory courses in political science are Garner's *Introduction to Political Science*; Gettell's *Introduction to Political Science and Readings*; Leacock's *Elements of Political Science* and Dealey's *The State*. Instructors offering international law follow Lawrence, Wilson and Tucker, Hershey, Davis or Hall. The volumes by Munro—*The Government of European Cities* and *The Government of American Cities* and Goodnow's work on *Municipal Government* are chiefly used in courses in this subject. For the history of political theories the

volumes followed are Dunning's *Political Theories* and Merriam's *American Political Theories*. Where texts are indicated for courses in jurisprudence, Holland's *Jurisprudence* is mentioned and for constitutional law McClain's *Cases on Constitutional Law* is frequently used.

Very few courses are given in the small colleges which are not based primarily on texts and the consensus of opinion among instructors is that this is the best method of conducting classes. As a rule the course in political science consists of a close study of one or two texts with some library work and class discussion upon the basis of reports from library reading. In a few institutions the texts are of high school grade but for the most part they are standard college texts. One result of the reliance on text books is inadequate attention to local government since the texts deal very briefly with this field and the average instructor has very little time or inclination to develop a course without a text. The case book system is employed in the courses in public and business law. In all the advanced courses the students are obliged to carry on independent work under the supervision of a particular instructor. The seminar has been found most successful in developing a keen interest among seniors and graduate students in many of the problems of politics.

The lines on which more adequate and thorough guides should be prepared are courses in state and local government and courses in European governments dealing with the operation of government rather than the history of political institutions. A majority of works now in use covering European institutions give most attention to political and constitutional history with the result that the analysis of present day political customs and practices necessarily suffers. Moreover texts almost invariably slight the administrative phase of government and the judicial department. In these as well as in other lines there will remain gaps which for many instructors cannot be filled until better texts or practical guides are prepared.

For courses in elements of law or jurisprudence there is no good text adapted for use in college classes. There are those who question the advisability of attempting to teach this subject to college students and it certainly is open to question whether much that passes as jurisprudence is not either beyond the comprehension of the undergraduate or is made up of material which more properly belongs to philosophy or ethics. The course in elements of law or jurisprudence is one of the problems of the college department of political science. Far too little emphasis is given in courses for undergraduates to the

fact that government is a legal mechanism and very often no attempt is made to connect up the study of political affairs with legal foundations. It is quite clear that some work should be given by way of an introductory study to law. What should be the content of this course, how and to whom it should be taught are questions which are far from being satisfactorily answered.

Methods of Instruction

Methods of instruction naturally vary according to the size of the institution and the number in classes. In the elementary courses with large classes the following methods are typical of replies to the committee's inquiry:

Brown University: Lectures, readings assigned and papers.

Columbia University: Lectures, papers and readings.

Grinnell College: Lecture and text book method combined with reports.

New York University: Informal lectures, recitations, discussions and papers.

Princeton University: Lectures, extensive readings and reports; conferences with small groups of students.

University of California: Lectures, papers and readings.

University of Nebraska: Lectures, recitations, papers and sectional conferences.

Williams College: Lecture, oral and written recitations, classroom discussions, readings on special topics.

In the colleges where classes are small and the work offered is more elementary it is customary to rely largely on text books and recitations with a limited amount of special readings and occasional class reports. Frequently the number of class hours allotted to such subjects as American government, comparative government and introductory political science are so few that it is quite impossible to do justice to a good text book, let alone to attempt extensive readings on the subject. One of the imperative needs for the improvement of instruction in these subjects is to increase the time allotment so that more thorough and intensive work can be done.

A large number of institutions are offering courses in current problems and political issues. As a part of these courses lectures are frequently given by men prominent in public life. Cornell University has recently established such a course with the prime purpose of training

for citizenship. The lectures are given by practical men of affairs and are designed to create a vital interest in the duties and responsibilities of citizens. The course proved to be such a success that it is to be continued and placed on a permanent basis.

TYPES OF COURSES OFFERED IN DEPARTMENTS OF POLITICAL SCIENCE

Four different types of courses are comprised within the range of departments of political science. The first of these types to be developed and now offered in most institutions giving instruction in political science is of a descriptive character dealing with the organization and operation of American and European governments. These courses are based upon Wilson's *The State* and Burgess's *Political Science and Constitutional Law*, and the more recent treatises on the governments of Europe or the texts describing American institutions. In some of these courses ancient and modern governments are considered first and then this preliminary work is made the basis for a study of the American system of government. The history of modern forms of government and their present organization from the constitutional point of view is the chief object of such courses. Second, there is a type of course which first presents the theory of the state (*Allgemeine Staatslehre*), which deals with the conception of the state, its basis, the form of its constitution, and sovereignty. In these courses the consideration of theories and political principles is followed by a comparative study of the departments of government, executive, legislative, judicial, and by an analysis of the ends and aims of the state. This course aims to present the philosophy and underlying principles of the state as well as to give some notion of the forms of organization. A third kind of course is one which is primarily confined to a study of functions rather than organization. This course, although involving comparative features, is more often frankly confined to a study of one branch of government or one system of government, and the matters of form and organization of public authority are subordinated to those of functional activities. All three of the above types of political science are presented in many colleges and universities.

A fourth type of course comprises the work offered in constitutional law, administrative law, international law, commercial law, Roman law, elements of law and jurisprudence. These courses mark the

dividing line where the technical phases of law merge into the realm of public policy, ethics and custom and thus constitute a common vicinage in which the departments of law and political science are equally interested and involved. It is in this latter type of course that the question arises whether they should not be offered primarily as law courses to which advanced undergraduates might be admitted instead of being offered under departments of political science and admitting law students. Each arrangement has some distinct advantage in its favor, but there is no indication of any uniformity in practice with the result that the relation between departments of political science and departments of law is one of the difficult problems of university instruction in government and law.

In the course of its investigations and the discussions aroused by the efforts of the committee certain problems have arisen on which there should be a more thorough exchange of opinion among teachers of political science. Some of these problems should receive special attention by the Political Science Association and after due consideration a well defined policy should be formulated as a guide to instructors and college administrators. A list of queries arising from a few of these problems is presented herewith.

LIST OF QUERIES RELATIVE TO INSTRUCTION

A. Methods of making instruction practical

1. Should elementary courses give special emphasis to a study of political theories and principles of government or to a study of government in operation?
2. If instruction in elementary courses should be made practical and concrete, what methods would you suggest to accomplish this end?
3. To what extent and in what ways can students be brought into touch with the actual operation of government?
4. Under what conditions may credit be allowed for such practical work?
5. What courses in history, economics, sociology and political science would you suggest as best adapted in the way of preparation for advanced instruction along lines of training for public service?

B. Relating to basic course

1. a. Is it advisable to offer a preliminary course as an introduction to the social sciences?
- b. Will a thorough course in history serve as an adequate introduction to political science, economics and sociology?
- c. Is it advisable to drop the courses in English and American constitutional history leaving these subjects to be treated in regular history courses?
- d. Should courses in the department of political science be open to freshmen?
2. a. Should the basic course in political science be American government or comparative government or a combination of the two?
- b. Is it advisable to give greater attention to American government in elementary courses, or should emphasis be given rather to the study of foreign governments?
- c. Can foreign governments be adequately and effectively treated in brief elementary courses, covering many countries, so as to make a general course in this subject desirable?
- d. Should contemporary and domestic forms of government be minimized in favor of the history of law and political institutions?

C. Relating to law and law courses

1. a. What should be the relation between departments of political science and departments of law in institutions with law schools?
- b. Should Roman law and jurisprudence be offered in the law school rather than in the college department?
- c. Is it advisable to offer courses in elements of law or jurisprudence to undergraduates?
2. a. Should administrative law and administrative methods be given more attention in elementary courses?
- b. Is it necessary to omit judicial procedure from elementary courses because of the technical nature of the subject?
- c. Is it advisable to offer commercial law in undergraduate departments of political science?

D. General

1. Should the course in general political science be abandoned in favor of courses in political theory, comparative government, etc.?
2. Is the term *Political Sciences* more accurate and desirable than the use of *Political Science* as at present?

3. What would you suggest as the content for a standard elementary course?

4. What classification of courses in political science would you suggest for the purpose of maintaining unity, and of giving emphasis to fundamental principles?

The committee desires:

a. Comments, suggestions and criticisms of its preliminary recommendations.

b. Specific answers to the above queries by those who have definite convictions as a result of experience.

c. Constructive suggestions for the standardization of elementary courses in political science and for the improvement of instruction in the subject.⁷

Respectfully submitted for the committee by

CHARLES G. HAINES,
Chairman.

PRELIMINARY REPORT OF THE JOINT COMMITTEE ON ACADEMIC FREEDOM AND ACADEMIC TENURE

SUBMITTED IN BEHALF OF THE COMMITTEE BY E. R. A. SELIGMAN

At the December, 1913 meeting of the American Economic Association, the American Sociological Society, and the American Political Science Association, this identical resolution was adopted:

"*Resolved*, That a committee of three be constituted to examine and report on the present situation in American educational institutions as to liberty of thought, freedom of speech, and security of tenure for teachers of economics (sociology, or political science).

"That the committee be authorized to coöperate with any similar committee that may be constituted by other societies in the field of political and social science."

The three committees appointed in virtue of these resolutions subsequently decided to merge into a joint committee on academic freedom, of which Professor Seligman was elected chairman and Professor Lichtenberger secretary. The report herewith presented to each of the three associations is the report of this joint committee.

⁷ The full report of the committee included a resume of the year's work and a brief statement relative to an investigation of secondary school instruction. Limitations of space required the omission of these portions of the annual report.

Your committee has held several meetings at which the general problems were discussed and has investigated several cases of alleged infringements of academic freedom. As a result it became apparent that the subject bristled with complexities of such a character that your committee feels itself in a position at present to make only a preliminary report.

It is important at the outset to remove misapprehensions as to the function of the committee. This function, as we understand it, is not that of a merely protective organization or professional trade-union. It was for this very reason that it was made to include publicists and lawyers as well as professors. Its object, as understood by us, is to point out the public rather than the private importance of the problem and to emphasize the duties as well as the rights of all parties concerned.

The public relations of academic freedom, apart from the teachers involved, are fivefold; to science, to the student body, to the trustees, to the presidents, and to the community at large.

(1) The modern university is the chief home of science. The aim of science is to discover new truth, but every new truth means the disappearance of old error and frequently involves a shock to existing opinion. The shock may be unwelcome but unless there be the fullest freedom in scientific investigation and in the proclaiming of its results, there can be no progress.

(2) The student body in our institutions of learning possesses the right of having presented to it the latest results of scientific research, whether or not those results have as yet been firmly incorporated into the body of accepted truth.

(3) The trustees of such institutions are interested in the problem of academic freedom because with the possible conflict in their minds between the claims of the general principle and the immediate welfare of the institutions committed to their charge a clearer understanding of mutual rights and duties should be helpful.

(4) The presidents of our institutions of learning are sometimes in a difficult position because of their double capacity, representing both faculty and trustees. When there is an honest difference of opinion as to the extent and limits of academic freedom it is just as likely that the president may need support against the trustees as that he may act as their mouthpiece in opposition to the faculty.

(5) The community at large has a right to expect of its institutions of learning, whether maintained by public contributions or supported

by private munificence, the best results of scientific achievement, unhampered by party bias or personal prejudice.

The difficulties of the problem referred to above involve current misunderstandings both as to the nature and limits of academic freedom and as to the fundamental theory of academic tenure of position.

Let us examine first the question of academic freedom or liberty of thought. This problem, it may be stated at the outset, does not exist in colleges under obligations to teach denominationalism, nor in institutions designed to spread specific doctrines of any kind. It is important, however, that such institutions should not be allowed to sail under false colors. Freedom of thought and the inculcation of a particular brand of thought are hopelessly irreconcilable.

If by liberty of thought is meant freedom of research, the necessity of its existence without any limits is so obvious as to be entirely indisputable. So slight, however, is the danger of its infringement in the American institutions of today that this aspect of academic freedom calls for no further discussion.

The situation is different when we come to the other phase of academic freedom, namely, freedom of speech or liberty of expressing in spoken or written word the results of scientific research. In past centuries the chief menace to freedom of this kind was theological; in recent times, with the advent of democracy in politics and industry, the danger zone has been shifted to economics, political, and social science.

The motive for infringing such freedom may be either private or public. In our privately endowed institutions it rarely if ever happens that an attempt is made to limit academic freedom because of threatened injury directly to the individual interests of the authorities. More common is the public or social motive, based on the desire of the authorities to prevent the spread of ideas or influences which are in their opinion harmful to true morals, sound politics, or the real social interests. In between these private and these social motives lies a large field where the motive asserted and believed by the authorities may be social in character and yet where in reality their own interests or that of their friends are implicated. In the political, economic, and social field almost every question, no matter how large and general it at first appears, is more or less affected with private or quasi-private interests; and as the governing body is naturally made up of men who through their standing and ability are personally interested in private enterprises, the points of possible conflict are num-

berless. When to this is added the consideration that most of the benefactors as well as the parents who send their children to privately endowed institutions themselves belong to the more conservative class, it is apparent that a similar pressure may, however, unconsciously, sometimes be brought to bear upon the academic authorities.

On the other hand, in our state institutions the danger is the reverse. Where the university is dependent for funds upon legislative favor, it has not infrequently happened that the conduct of the institution has been affected by political considerations; and where there is a definite governmental policy or a strong public feeling on economic, social, or political questions, the menace to academic freedom may proceed from the expression of views that in the particular political situation are deemed ultraconservative rather than ultra-radical.

The real point of danger, hence, is not so much the particular shade of opinion as that it differs from the one entertained by the authorities. The problem resolves itself into one of departure from accepted standards; whether the departure is in the one direction or the other is immaterial.

In considering this problem six classes of difficulties present themselves. The first query is as to whether the identical rule ought to be applied to our colleges as to our universities. In a true university there may be a dozen instructors teaching various aspects of the same subject and ranging in their views over the entire gamut of opinion. The student has his choice and balances the idiosyncrasies of one scholar against those of another. In a small college, where there may be only a single instructor to cover the entire field, not only are the students apt to be much more easily influenced in their general point of view, but the reputation of the college itself is more likely to be affected by the opinions of any member of the faculty. There is, indeed, everywhere a danger line; but is the line not somewhat further removed in the one case than in the other?

Secondly, irrespective of the distinction between a college and a university, ought not different rules to be applied to graduate and undergraduate instruction, to teachers of immature, as compared with those of more advanced, students? Is it not true that the more youthful the class of students, the greater is the teacher's obligation to present scientific truths with discretion and with some regard to their character building? Should the rule of academic freedom in all its rigor not be limited to the instructor of the more mature and advanced students, whose character has largely been formed and who are in the proper

attitude to receive truth for truth's sake? Is not much of the unclearness in the present situation due to the failure to distinguish between classes of instructors?

Thirdly, ought the same rule to apply to the specialist and to the non-specialist? Within the university this problem cannot arise, for the views of a biologist on the tariff or of a physicist on socialism would be of no interest to any of his students. But if the biologist should give a public address on some economic question or if the physicist should take part in a political campaign, ought interference with this to be considered as an infringement of academic freedom?

Fourthly, as to the instructor speaking on his own chosen topic, ought a distinction to be made between the opinions expressed within the class room or lecture hall and those expressed on the outside? The opinions of a scholar in a lecture room indeed ought to be considered privileged. Discussions in the class room are not supposed to be formal utterances for the public at large. They are often designed to provoke opposition or to arouse debate. There should be no room for sensational newspaper quotations from such remarks. In foreign countries it is a misdemeanor to publish or otherwise to quote a university lecturer without his consent. Ought not such a practice to be observed in this country?

The specialist may, however, speak on the subject outside of the class room, either with the students informally or in a scientific address or in a popular talk. He may, in the exercise of the ordinary duties of citizenship, take part in politics, and may even run for office or hold office.

To what extent and under what conditions ought this to be permitted? Does the possession of special opportunities of study and presumably of special knowledge on political, social, or economic questions constitute a reason why one *should* use his information to influence public opinion? Or does it make it desirable, on the contrary, that he should *not* voice his opinions? It may be claimed that an academic teacher who publicly takes a definite stand on a political or economic issue is thereby impairing his reputation for impartiality. Does this, however, not exaggerate the distinction between intramural and extramural utterances? If within the class room the scholar discusses a topic in a scientific way, presenting both sides of the question and then drawing his own conclusions, does the mere fact of his expressing these conclusions in public necessarily impair his reputation as a scientist? And has the community not the right to profit by the opinion of the expert, if he really is such?

Fifthly, to what extent should a scholar be expected to make concessions to public sentiment? That there are limits is obvious. A teacher in a southern university might have private views as to the general philosophy of social equality between the white and the colored races; but would he not be injudicious, to say the least, publicly to oppose the overwhelming general sentiment? A sociologist might come to the conclusion that trial marriages were desirable. But could an objection to the public expression of such views properly be called an infringement of academic freedom? Even though experience shows that there is no man or set of men so capable as to be able to decide what academic teachings shall be suppressed as contrary to good morals, can we claim for the academic teacher a consideration which will entirely relieve him from the consequences applicable to all others when they advance opinions for which the popular mind is not prepared and which are at variance with the recognized fundamental standards?

Sixthly, is not the crux of the situation often to be found less in the statement of any particular opinion than in the method of its expression? If the academic teacher takes part in any discussion where public opinion is sharply divided or hostile, is it not incumbent on him sedulously to refrain from extreme or intemperate statement? Can freedom of speech be permitted to cover self-exploitation or mere desire for notoriety? And if a university teacher differs so widely in method of expression from his fellow scientists as to forfeit their confidence in his scholarship and poise of judgment, can he continue to invoke in his behalf the plea of academic freedom?

It is clear, therefore, there are no rights without duties and that the duties of teacher and of authorities are reciprocal. The duty of the academic authorities is to refrain from confounding their own predilections with what they imagine to be public policy; the duty of the professor is to remember that he is acting not merely as an individual but as the representative of science.

Various kinds of pressure upon a teacher may be exerted to limit his academic freedom, but it is only the most severe and therefore the most unusual that ever come to public notice, namely, dismissal. Milder disciplinary measures are: warning, transfer to other work, denial of promotion or of increase of salary. The difficulty of ascertaining the existence of such measures is almost insurmountable, inasmuch as other reasons may almost always be assigned by the authorities, such as lack of ability, tactlessness, general incompatibility, etc. If, how-

ever, we confine our attention to dismissal we are brought face to face with the most fundamental point in the problem. What is or what should be the nature of the employment and tenure of a college or university teacher?

On the one hand the view is more or less frankly expressed or implied by the authorities that academic teaching is a purely private employment, resting on a contract between the employing authority and the teacher. The same authority may dismiss the employee at any time, for any cause, or for no assigned cause whatever; and the contract itself is terminable at the pleasure of the trustees. On the other hand, this is denounced as the "hired man" concept of the subject, destructive to the scientific spirit of the work, and to the dignity of the profession necessary to attract able scholars and teachers. Academic teaching, it is said, must be regarded as a quasi-public official employment in which the original appointment is made by the authorities who are bound to act not as private employers or from private motives but as public trustees. It is held that only in this way can there be made possible the development of the standards of disinterested scholarship or can there be created a body of scholars and teachers to perform for the community a necessary function which cannot otherwise be achieved. It is a distinctly different service from that of the judge, the lawyer, the journalist, or the ordinary corporation official. It implies a security of tenure, not as a personal privilege but as an expedient, farsighted public policy, which, so far as it is consistently followed, attracts high ability into a social service with small pecuniary reward.

Evidently the practice in most cases exemplifies neither ideal of employment, although it ranges from the one extreme to the other. In some of the smaller colleges the private-employment concept is nearly realized. In some of the larger universities the public-employment concept is closely approached. Almost everywhere there is great uncertainty of practice, reflecting great vagueness of conviction on the subject.

It is clear that the further we get away from the hired-man theory the more definite will be the replies to the queries which we desire here only to formulate. First, ought an academic teacher ever to be dismissed at all, or ought he to be virtually irremovable, as in the continental universities?

Second, ought a distinction to be drawn in this respect between a college and a university teacher, between an officer of high grade and

one of low grade; between an officer of long standing and one of recent tenure?

Third, if such a distinction is permissible, ought an academic teacher of long standing ever to be dismissed without the payment of a pension?

Fourth, ought an academic teacher of any grade ever to be summarily dismissed by the authorities without hearing or trial?

Fifth, if there is to be a hearing or trial, ought this to be before the university authorities or before some tribunal representing the general interests of scholarship?

Sixth, ought an academic teacher ever to be dismissed without public declaration of the reasons therefor, and if not, ought the reasons alleged ever to be a mere pretext, even though the suppression of the real reason is in the supposed interest of the individual himself?

From the foregoing it is clear that there may be differences of opinion as to the ideals to be realized, as to the practicable means of attaining the ideal, and as to the limitations to be observed. Our preliminary investigation of actual cases has brought us to the tentative conclusion that mistakes have been made on both sides and that the chief difficulty arises from a failure of academic teachers as well as of academic authorities to observe the duties no less than the rights of their position. In order, therefore, to enable us to devote more study to the investigation, both in its general aspects and in the particular cases of alleged infringement of academic freedom, we recommend that this committee be continued with a view of making a final report at the next annual meeting.

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DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Constitutional Construction and Operation. Gherna vs. State. (Arizona, Feb. 13, 1915. 146 Pac. 494.) A constitutional amendment forbidding, under specified penalty, the manufacture and sale of intoxicating liquor, is self-executing, although the amendment also contains a section to the effect that the legislature shall by appropriate legislation provide for the carrying into effect of the amendment.

The amendment forbids introduction of liquor into the State, but does not prohibit the possession or consumption of liquor. If under these circumstances the absolute prohibition of introduction into the State is not within the terms of the Webb-Kenyon act, that part of the amendment is separable and one prosecuted for selling cannot raise the point.

Equal Protection of the Laws. State vs. W. W. Robinson Co. (Washington, March 1, 1915. 146 Pac. 628.) Where an act regulating the sale of certain commodities makes an exception in favor of certain producers, which exception constitutes an invalid discrimination, the exception will not be read out of the act, but the act is invalid.

Police Power—Race Legislation. Carey vs. Atlanta. (Georgia, Feb. 12, 1915. 84 S.E. 456.) A municipal ordinance attempting to forbid colored persons to move into "white blocks," or white persons to move into "colored blocks," is unlawful and violates the due process clause of the constitution, since it destroys the right of the individual to acquire, enjoy or dispose of his property. The court points out that under the terms of the ordinance a situation might arise in which the objection of neighbors might render a lot unavailable for either white or colored occupation. The court cites State vs. Gurry, 121 Md. 534 and State vs. Darnell, 166 N.E. 300.

Vested Rights. Gherna vs. State. (Arizona, Feb. 13, 1915. 146 Pac. 494.) It is no objection to the validity of a prohibition amendment, that unexpired liquor licenses are thereby cancelled without compensation.

Internal Improvements—Afforestation. State ex. rel. Owen vs. Donald. (Wisconsin, Feb. 12, 1915. 151 N.W. 331.) The proposed amendment to the Wisconsin constitution (Art. 8, sec. 10) authorizing expenditures for acquiring, preserving and developing the water power and forests of the State, did not become part of the constitution, owing to fatal defects and irregularities in the course of the joint resolution through the legislature.

A contract for the purchase of land with deferred payments creates an indebtedness within the meaning of the constitutional prohibition.

The forest reserve scheme provided for by the laws of 1911 constitutes a work of internal improvement to which the State may not be a party, although the State, as the owner of lands, may spend money in managing forests on such lands and may perhaps even add to such lands for the purpose of better utilizing those which it has.

Marshall, J., who writes the extremely verbose opinion of the court, covering forty pages of the *Northwestern Reporter*, puts a narrow construction upon the taxing power of the State under its constitution from which Winslow, C. J., dissents.

Justice Marshall also takes occasion to justify the position that defects in the passage of a resolution through the legislature may invalidate a proposed constitutional amendment, by the following observations on "technicalities."

"We think proper to remark as of public interest, that it is a mistake to suppose the judicial disapproval of a legislative effort to propose a constitutional amendment to the people, as in *State, etc., vs. Marcus*, supra, and here, is based on what is commonly termed in legal matters "technicalities." It is very far therefrom. Those who assume to teach on this subject should be very careful not to inculcate false notions in respect to such an important matter. To characterize the point that there has been a failure to do a thing which the people made a condition precedent to efficiency of the particular activity of amending the constitution, a technicality, shows want of appreciation of the very basic features of a constitutional system and, unwittingly, breeds disrespect for such a system, if not for law in general. The court does not accord any dignity to mere technical accuracy in respect to non-essentials, and none in any situation unless required by mandate of written law. But the court is in duty bound to decide upon what is technical or directory, and what is substantial and mandatory. What the people in creating our form of government made material, no one has a right to say is not or is technical, in the common acceptation of that term as being mere matter of form. The court cannot so invade the sovereign command unless its trusted instrumentalities violate are solemn obligations to which they are pledged by their oaths of office."

Municipal Powers. Jones vs. Portland. (Maine, Feb. 27, 1915. 93 Atlantic, 41.) A city may be authorized to establish and main-

tain within its limits a wood, coal and fuel yard for selling at cost wood, coal and fuel to its inhabitants.

A similar decision had been rendered in 111 Maine 486; 90 Atl. 318.

Administrative Appeal. State vs. District Court. (Montana, Feb. 16, 1915. 146 Pac. 743.) An act requires that persons desiring to practice as registered nurses shall be examined by a state board of examiners, and allows an appeal from the decision of that board to the State Association of Graduated Nurses. This provision is sustained, although the State Association is a voluntary organization. If the rejection by the board is arbitrary, the applicant may, instead of appealing, resort to mandamus; but cannot by mandamus obtain a correction of the decision from which he has appealed; the courts can then only correct the action of the appellate body.

Claims against the State. Westinghouse r.c. Co. vs. Chambers. (California, Jan. 8, 1915. 145 Pac. 1025.) The provision of Sec. 366g Political Code, that where judgment is rendered against the state treasurer in an action brought against him for taxes illegally collected, the comptroller shall draw his warrant for the payment of such judgment, violates the Article 4, Sec. 34, of the constitution according to which appropriation bills shall not contain more than one item of appropriation for a single and certain purpose. This latter provision operates notwithstanding the constitution expressly permits actions to recover taxes illegally collected.

BOOK REVIEWS

Introduction to the Study of the Law of the Constitution. By A. V. DICEY. Eighth edition. (New York: The Macmillan Company. 1915. Pp. cv, 577.)

After thirty years of continuous service, after having long been accepted as a standard work on the English constitution, it would be gratuitous and unnecessary to attempt a new estimate of Dr. Dicey's *Introduction to the Study of the Law of the Constitution*. What is of significance in the eighth edition is that it contains a new introduction—an introduction of ninety closely printed pages—which is so valuable that the edition containing it must soon displace the older editions for students who would keep themselves abreast of constitutional usages and developments in England.

In this introduction Dr. Dicey compares with interesting detail the English constitution, as it stood in 1884 when the first edition of his book was written, with the constitution as it stood in the year that witnessed the outbreak of the great war. At the time the first edition was finding its way into the hands of students, the working classes in England were not yet in possession of the parliamentary franchise. Only a beginning had been made with the reform of procedure of the House of Commons. The organization and machinery of political parties was neither so extensive nor so complete as it had become in 1914. The nationalists were a small and separate group in the House of Commons; but it was 1906 before the independent labor party and the trade union labor party had any considerable and distinct representation at Westminster. The power of the House of Lords in 1884 was as unimpaired as it was in the decade that followed the reform act of 1832. Nomination boroughs still existed. The cabinet was not nearly so powerful as it had become by 1914. The era of indifference towards colonial possessions was drawing to a close. Canada was the only dominion; but the new era in the history of the empire—the era that began in England with official and popular recognition of the fact that representative and responsible government in the larger oversea possessions had proved itself a success—had not fully opened.

In surveying the effect of these changes Dr. Dicey restates the principle of parliamentary sovereignty as he presented it in the edition of 1885, and then indicates how the principle stands now that the parliament act of 1911—the lords' veto act—is law. His definition of parliamentary sovereignty is that parliament has "the right to make or unmake any law whatever; and further that no person or body is recognized by the law of England as having a right to override or set aside the legislation of parliament; and further than this right or power of parliament extends to every part of the king's dominions." "These doctrines," he adds, "appear in the first edition of this work; they have been repeated in each successive edition published up to the present day. Their truth has never been denied." Regarding the change in the doctrine due to the new and inferior position of the House of Lords, Dr. Dicey holds that sovereignty still resides in parliament; but that "the parliament act has greatly increased the share of sovereignty possessed by the House of Commons, and has greatly diminished the share thereof belonging to the House of Lords."

Nearly as important as the change in the position of the House of Lords is the altered position of parliament towards the oversea dominions—Canada, Australia, New Zealand, South Africa and Newfoundland. The imperial parliament claims today, as it did in 1884, absolute sovereignty throughout every part of the British empire. This claim extends to the dominions; but the omnipotence of parliament, though theoretically admitted, is today not applied in its full effect to the self-governing dominions. In stating the restrictions still applicable to the dominions, Dr. Dicey enumerates them in this order—parliament does not concede to any dominion or its legislature the right (1) to repeal any act of the imperial parliament applying to a dominion; (2) to make of its own authority a treaty with any foreign power; and (3) to stand neutral in the event of war between the king and any foreign power, or in general to receive any benefit from a foreign power which is not offered by such power to the whole of the British empire.

Dr. Dicey's note of the second of these restrictions, however, seems to overlook the fact that the dominions do make their own treaties of commerce, that these treaties, like the French-Canadian treaty of 1907, are negotiated by plenipotentiaries named by the dominion governments, furnished with credentials from the king-in-council. Moreover, Canada, under the treaty of 1907, enjoys advantages under the customs tariff of the republic of France that are not common to the other dominions.

By 1884 England had conceded to the colonies that are now dominions the management of their own internal affairs. Between 1848 and 1884 this had come to include (1) an executive dependent upon a majority in the popularly-elected chamber; (2) the right to enact protective tariffs without regard to the interests of British manufacturers; and (3) the right to make their own coastwise navigation laws. English statesmen, as Dr. Dicey states, intended in 1884 to retain for the parliament at Westminster, and the imperial government, a real and effective control over the action of the ministry and the legislature of each self-governing colony in so far as that control was not palpably inconsistent with independence as regarded the management of strictly local affairs. But the first quarter of a century of the new era in the history of the empire was a period of constitutional as well as material development in the dominions; and in 1914, the imperial policy of England was to grant to every dominion absolute, unfettered, and complete local autonomy in so far as such perfect self-government by a dominion does not clearly interfere with the loyalty of a dominion to the empire.

Taking Canada as an example, the newer and larger freedom thus described, is exemplified by the restrictions the dominion has imposed on oriental immigration; by its immigration code, under which undesirables from England, Scotland and Ireland are excluded; and by the power the dominion enjoys of negotiating and completing its own commercial treaties and conventions. In these thirty years, 1884–1914, a better understanding and a new spirit have developed in the dominions and the United Kingdom. A new public opinion in the mother country and in the dominions has been created, and a new and closer relationship established, of which the expression today is the whole-hearted coöperation of the dominions with England in the war with Germany, Austria and Turkey. Imperialism is the term applied to this new spirit and new opinion. Dr. Dicey's readers will welcome, and most of them will gladly accept, his definition of imperialism. It is the idea—the conviction—that “the British empire is an institution well worth maintaining, and this not on mere grounds of sentiment, but for definite and assignable reasons.” “Upon England and upon every country subject to the king of England,” continues Dr. Dicey, in amplifying his definition, “the British empire confers at least two benefits: It secures permanent peace among the inhabitants of the largest of existing states; it again secures, or ought to secure, to the whole of this vast community absolute protection against foreign attack.”

Turning from imperial relations to developments within England itself from 1884 to 1914, Dr. Dicey notes and examines the reasons for the decline in reverence for law. He examines with some detail the tendency in legislation since 1906 to entrust judicial functions to civil servants who are neither lawyers nor judges; points out that much of the new work imposed by socialistic legislation on civil servants is business; and emphasizes a fact on which Judge Parry, an English county court judge, in his strikingly interesting book on *The Law and the Poor*,¹ lays much stress, that the courts are, in the nature of things, unsuited to the transaction of business. Judge Parry, who has had eighteen years' experience as a judge of the operation of the workmen's compensation act of 1896, regrets that the courts were ever brought into its working, for the act has been narrowed by judicial interpretations. These interpretations have created in the minds of the working classes a distrust of the judges, and helped towards the decline in reverence for rule of law, which is commented on by Dr. Dicey. Judge Parry insists that if England would recognize the law-making power of the judges, openly discuss it, and endeavor to define and limit it, "there would be less fear in the future of a rupture between the people and the judges when futurist laws of far-reaching social reform come to be administered by the courts." "The lamentable failure of consistent interpretation of the compensation acts," adds the author of *The Law and the Poor*, "is not calculated to raise the judiciary in the affections and respect of the working classes." Like Judge Parry, Dr. Dicey realizes that there is much business arising out of new legislation that need not go to the courts. The transaction of business, he maintains, is a very different thing from the giving of judgments; and he adds, "the more multifarious, therefore, become the affairs handed over to the management of civil servants, the greater will be the temptation, and often the necessity, of extending the discretionary powers given to officials, and thus preventing law courts from intervening in matters not suited for legal decision."

One of the valuable sections of the new introduction to the Law of the Constitution is that in which Dr. Dicey discusses the development since 1884 of new constitutional ideas. Political inventiveness, he insists, has in general fallen far short of the originality displayed in other fields than politics by citizens of progressive states; and in no part of English history, he recalls, was the tardy development of new

¹*The Law and the Poor*, by Judge Parry, Smith Elder and Co. 1914.

constitutional ideas more noteworthy than during the whole of the Victorian era. From 1837 to 1901 was an era which added little to the world's scanty store of political or constitutional ideas. The same remark, Dr. Dicey is convinced, applies in one sense to the years that have passed since the opening of the twentieth century; for woman suffrage, proportional representation, federalism and the referendum—the constitutional ideas he discusses in the introduction—are, he holds, for the most part not original. Their novelty consists in the new interest which during the last fourteen years they have come to command. Of most interest in this discussion is Dr. Dicey's statement of the case for and against federalism. New schemes for bringing the empire into closer and more intimate relations will assuredly be put forward and strongly pressed at the end of the war. The advocates of federalism as a solution of the problems that will then confront the empire will find no support for their theories in Dr. Dicey's detailed discussion of its possibilities and limitations as applicable to Great Britain and the oversea dominions. E. P.

Intervention and Colonization in Africa. By NORMAN DWIGHT HARRIS, with an introduction by James T. Shotwell. (Boston: Houghton Mifflin Company. 1914. Pp. xviii, 384.)

The close of the 19th century witnessed a remarkable revival of the spirit of imperialism. The foreign policies of the chief European states again took on the form of colonial rivalries and aggrandizement. In his recent work on *Intervention and Colonization in Africa*, Professor Harris has given us a most interesting description of one phase and perhaps the most important one, of this world-wide movement. The author has been singularly successful in bringing out the complex elements which have entered into the wild scramble for the partition of the unclaimed territories of that vast continent. The history of this movement is indeed a remarkable record of diplomatic intrigues, heroic explorations and administrative achievements and failures.

Professor Harris is able to enter into the spirit of this struggle with the greater zest as he is himself a thorough-going imperialist. He assumes the legitimacy of colonization almost without question. He is much more interested in the rivalries of the European powers than in the efforts of the native races to preserve their own soil and independence. He is, however, a benevolent imperialist. Although tempted at times to judge of the success of a colony too much from the

standpoint of its economic progress, he is not forgetful of the primary responsibility of the colonial authorities for the promotion of the moral and social well being of the natives.

The historical and geographical aspects of the subject likewise appeal to him far more strongly than do questions of practical administration. The author is at his best when dealing with the splendid achievements of the modern conquistadors. Only here and there do we find an attempt to deal with the serious problems of colonial government, such as questions of land policy, labor legislation, the relations of the races and the future of the black population. Such opinions as he does express as to the régimes of the respective colonies are marked by moderation and impartiality of statement. He has formed a favorable judgment of British and French administration especially in Northern Africa but is somewhat doubtful as to the success of the German and Belgian colonies. On one point only are his opinions open to serious question and that is in respect to the government of the chartered corporations, particularly the South African Company. It is very doubtful indeed, if the settlers of Rhodesia are as appreciative of the advantages of the company's rule as the author appears to be.

But the skilful handling of the narrative cannot conceal some of the manifest defects of the work. The subject is an intricate, complicated one; from its very nature it demands the most careful and comprehensive scholarship; and we cannot but feel that the author has turned out this study too hurriedly. He has been so much absorbed by the dramatic succession of events that he has not taken the time to fill in the more prosaic historical and sociological background of his subject. His analysis of the political and economic factors out of which the colonial movement arose is good as far as it goes, but is quite insufficient as a foundation for a study of world diplomacy. The treatment of the diplomatic phase of the subject is equally unsatisfactory. We get but an impressionistic sketch of the international drama. Professor Harris has made good use of the English parliamentary papers and to a less degree of the French official publications, but he has almost entirely neglected to consult the official documents of other countries. In the absence of these most important sources of information, he has been obliged to fall back upon the *London Times* and other secondary material. The result has almost necessarily been to give a somewhat partial and inconclusive presentation of some of the matters in controversy, particularly in regard to the Moroccan question.

But the most serious defect of the book is to be found in the lack

of scientific accuracy. The author has gathered together a vast mass of valuable data, but he has failed to check up and assimilate all of his material. His knowledge of the course of English colonial history and government is particularly at fault. It is strange indeed that the author should have made the mistake of confusing the introduction of representative institutions into the colonies with the grant of responsible government. The chapter on the South African Union reveals a similar lack of familiarity with some of the leading facts of the constitutional history of that group of colonies, as, for example, in respect to the stormy administration of Sir Bartle Frere. The formation of the South African Union is certainly of sufficient importance to have merited something better than a hasty and superficial consideration. Yet the author has overlooked most of the literature upon the subject; he does not even refer to *The Government of South Africa*, or Walton's *The Inner History of the National Convention of South Africa*, to mention but two of the most important books dealing with the union.

These limitations and defects undoubtedly detract from the scientific value of the work, but they by no means destroy its inherent worth. The book was evidently prepared for the general public and it is admirably adapted to serve this general purpose. It furnishes us by all odds the most readable and illuminating account that we today possess of the opening up of the African continent. There was a popular demand for just such a work; and Professor Harris has abundantly satisfied that demand. In so far as the author has fallen short of producing a final and authoritative treatise he has failed because he has attempted too much in the compass of a single volume. But he has prepared the way for a more comprehensive treatment. The intricate details of European diplomacy and the problems of colonial administration can be worked out more carefully later. Meanwhile, we shall look forward with pleasant anticipation to the appearance of the promised complementary volume on European extension and competition in Asia.

C. S. ALLIN.

The Legislative Union of England and Scotland. By P. HUME BROWN. (Oxford: The Clarendon Press. 1914. Pp. xii, 208.)

Prof. Hume Brown, in his introductory chapter to *The Legislative Union of England and Scotland*, remarks on the ignorance of Scotsmen

generally of one of the most fateful periods in their national life. There is good basis for this comment on the neglect of Scottish historians of the dynastic, constitutional, economic and ecclesiastical crises that developed with the beginning of the reign of Queen Anne. The comment might have been more inclusive; for it was 1903 before there was a history of the old parliament at Edinburgh, and of the union as it affected parliamentary representation; and it was 1905 before there was a history of the Scottish parliament written by a Scotsman. The first of these two books, written not in Scotland, but in New England, was concerned only with the Scottish parliament; with the ancient, remarkable, and beneficent institution the convention of royal burghs; and with the representation of Scotland in parliament at Westminster as it existed from 1708 to 1832. A hiatus in the history of the union has now been completely and admirably filled by Prof. Hume Brown; and it only remains for a Scottish historian to trace the influence—mostly beneficial—of the old Scottish parliament and of the convention of royal burghs on the political civilization of Scotland and on Scottish national life and character.

In his history Professor Brown confines himself to the union. Not a single aspect of the union has escaped his attention. The complicated condition of political parties in Scotland from the beginning of the reign of Queen Anne to the end of the Scottish parliament; the Jacobite movement; the forces that were at work in the Presbyterian, the Cameronian, the Episcopalian, and the Roman Catholic churches; conditions in the highlands; Scottish trade and the jealousies of Scottish traders of the advantages enjoyed by England, are all described with much clearness. Little attention is given to the debates on the treaty of union in parliament at Westminster. But the proceedings in the Scottish parliament preliminary to the naming of commissioners for the union; the deliberations of the commissioners at the Cockpit at Whitehall; and the debates on the treaty in the Scottish parliament, are set forth with interesting detail; and the story of each stage of the negotiations and of the difficulties of the statesmen at Westminster and at Edinburgh who were working for the union are told with freshness and glow.

These Ford lectures on the union were obviously a congenial task for Prof. Hume Brown. They enabled him to put into service much new material; and incidentally to pay deserved tribute to the statesmen of Scotland who carried the union; for Professor Brown is convinced, and with good reason, that students of the history of the union "cannot

but be struck by the fact that there has seldom met in any national crisis a body of men more capable by talent, by accomplishment, and by experience, of grasping the import of the momentous question they had to determine." There was bribery to carry the union measures through the Scottish parliament—peerages, knighthoods, and pensions, and some bribes of ready money. But the history of the union of 1707 is not the squalid story of the union of Ireland and Great Britain of 1800; and considering the times, the methods by which the union of 1707 was accomplished could have left no rankling and embittered memories, such as were left by the union of Ireland and Great Britain.

Prof. Hume Brown gives singularly little attention to the parliament that disappeared in 1707. Its electorate and its unique organization are described in not more than a couple of pages. In view of the fact that when Scotland came into the union it had a much better political civilization than England—chiefly due to the parliament at Edinburgh, and the direct and continuous influence that the convention of royal burghs had exerted upon it in all domestic legislation, it is a little remarkable that a Scotsman writing at length on the union, offers no estimate of the work of the Scottish parliament—no eulogy of it in a history of the proceedings in Edinburgh and London that resulted in its disappearance and in the merging of the two legislative systems.

Alison, in an article published in 1834 in *Blackwood's Magazine*, showed in how many respects the political civilization of Scotland in 1707 was superior to that of England in the reign of Queen Anne. Alison's claim has never been questioned. It could not be disputed; and as recently as last year Judge Parry, in his book on *The Law and the Poor*, recalled that in Scotland justice had always been within easier reach of the poor than in England. Scotland also had better and much less expensive schools than England. It had a better municipal system than that of England. These advantages, and others that made for the good of the common people, Scotland owed partly to the fact that it was a country of poor people, but mostly to the parliament at Edinburgh, and to the extent to which parliament was influenced by the still existing convention of royal burghs. There are now two histories of the Scottish parliament and two or three histories of the union. The need today in Scottish historical work is a careful and detailed study of the influence of the Scottish parliament and the convention of royal burghs on Scottish political civilization, and on Scottish national character; and Alison's article in *Blackwood* of eighty years ago might well be taken as a starting point for such an undertaking.

EDWARD PORRITT.

+ *The Law and the Poor.* By EDWARD ABBOTT PARRY. (New York: E. P. Dutton and Company. Pp. xxi, 316.)

Quite irrespective of legal text books, a large library could be got together of books written by English lawyers and judges. Most of them would be autobiographies telling of experiences at the bar, on the bench, or in the House of Commons, for successful English barristers regard a seat in the House of Commons as natural a step as becoming a K. C. and taking to a silk gown. *The Law and the Poor* is in neither of these two classes. It is neither a legal treatise, nor an autobiography, although it is based on Judge Parry's twenty years' experiences of county courts, plus some experience as honorary justice of the peace. It is one of the most readable and outspoken books ever written by an English judge. About the only book with which it can be compared is William Hutton's history of the old court of requests at Birmingham, with the philosophical analyses of the cases upon which Hutton and his fellow commissioners of the court of requests adjudicated. William Hutton wrote of the administration of justice at Birmingham in the last half of the eighteenth century; and his book—quite remarkable in its way—is now chiefly valuable for the insight it gives into the condition of the wage-earning classes in a large industrial center in the years when the factory system was superseding the home workshop. One hundred and ten years have elapsed since Hutton wrote. The history of law reform in this period is a long and interesting chapter, and on the whole an exhilarating one. But Judge Parry shows that much more reform in legal procedure is necessary before there can be equality before the law for rich and poor in England. The inequalities and hardships which Judge Parry reveals are those of the police court, the county court, and the divorce court. He lays special stress on the hardships resulting from imprisonment of the poor for debt, and on the prohibitive cost of carrying a divorce case to London; for in England only one court is empowered to grant divorce decrees. As a contribution to the social history of England in the twentieth century, Judge Parry's *The Law and the Poor*, is quite as valuable as Hutton's unique contribution to the history of the first thirty years of the factory era. It is essentially a book to be read as distinct from a treatise or a book of reference; and its style, its humor, and its democratic sympathies, are so impelling that it cannot fail to become one of the most widely read books which treat of English law and its administration no matter from what standpoint. It is a book that its author intended should be

widely read. It was written in the first place for an English Sunday newspaper; and in book form it is dedicated "to the man in the street, in the pious hope that he will take up his job and do it."

Party Government in the United States of America. By WILLIAM MILLIGAN SLOANE. (New York: Harper and Brothers, 1914. Pp. xvii, 451.)

This volume consists in the main of the lectures delivered in Germany during the year 1912-1913, while the author was Roosevelt professor at the Universities of Berlin and Munich. They are now presented in revised form in English. One might well expect from a study bearing such a title a systematic analysis of the forces governing party action, the ends to be achieved, and the means for accomplishing those ends, i.e., a theory of party government. Professor Sloane, however, has not attempted this except incidentally to his main purpose which he sets forth as follows: "The work has been done primarily for students and teachers whose field is the development of American institutions; but likewise for serious readers desirous of understanding how our government has come to assume its present form." He indulges the hope that the book, "having met with success abroad, . . . will prove of even higher value at home."

The treatment then is frankly historical; the bulk of the volume, Chapters iv to xxxiii, inclusive, is devoted to an account of the inception of the American party system and the various phases of its development, an account which emphasizes the fortunes of parties, rather than the changes in institutions, and follows generally the well trodden path of such narratives. Where he deviates from this course the author surprises us with such statements as that Jay "technically" would have become president had the deadlock in the election of 1800 continued until the following March 4th (p. 78); or that New York is a "state naturally Democratic" (p. 274); or that after the taking of the Philippines and Porto Rico "for fourteen years questions of foreign policy completely overshadowed domestic affairs" (p. 264). On this last point, however, he himself is not really sure, for when discussing the presidential and other campaigns after 1898 he finds the chief issues, except in 1900, to be domestic affairs (see pp. 272, 275-277, 287-289, 294, 298). The narrative of political development has the merit of being up to date; it includes comments on the Wilson administration down to the spring of 1914.

Those who are looking for a philosophy of parties must pick it out piece-meal, a fragment here and a fragment there, as the author drops his opinion in the course of his history. They will thus find the author's belief to be, apparently, that parties in this country are fundamentally either loose constructionist or strict constructionist, i.e., that their views with respect to policies take their color from their views with respect to the interpretation of the constitution (pp. 191, 192, 207, 212, 225, 286, etc.) This division is closely allied to another basis, i.e., the conflict between those who would extend the sphere of all governmental action and the strict individualists. A third influence forcing our party system into its present mold is, in the author's mind, a tendency for an aristocracy of wealth to ally itself with the proletariat against the middle class of our population (pp. 5, 16, 57, 86, etc.). Some students will doubtless be inclined to point out that nearly every party in our history has been at some time loose constructionist—judged either by the words of its platform or of its leaders, or by its actions when in office—and to regard this fact as sufficient to show the incompleteness of such a doctrine of fundamental and permanent party alignment. Likewise it may be noticed that the democratic party, while generally regarding itself as individualistic, has not hesitated to advocate government ownership of railways, merchant marine, and telephone and telegraph lines. As to a class basis for party division it seems to be true that more often the split is vertical, i.e., parts of each class are arrayed on opposite sides.

An explanation of the two-party system is found in the interesting proposition that when power resides "in the people and extends from them upward through the grades of their elected officers" there will generally be two parties only, and conversely, that when power descends from the top downward there will be surely more than two parties, three at least, the right, the left, and the center" (pp. 15, 16). Some will doubt that this explains the difference between French and English parties. It may be observed in passing that this view of parties probably accounts for the author's neglect of the importance of third party movements.

Political thinkers who find the real foundations of parties in the play of economic interests, in the conflicting demands of different industrial groups and geographical sections of a state, will inevitably be disappointed in such statements as these: "The initiated want power primarily; its use is secondary" (p. 88); or "American parties . . . resemble no others in any substantive way, but are in-

digenous to American soil" (p. 2). True the class struggle is recognized, but little is presented to show that parties are the weapons with which opposed interests or conflicting desires in the State combat each other for the control of the government in order to control the legal system which, under present conditions, is bound up with our economic system. To many students of contemporary history this struggle appears the same in the democratic countries of Europe as in America, and parties there seem fundamentally the same as here no matter how different some of their manifestations may be.

However, the development of a philosophy of parties is not the avowed purpose of the work, and in achieving most of the ends named in his preface Professor Sloane has succeeded admirably. This is especially true in those chapters at the end of the book dealing with the relation of the parties to the presidency, the congress, the judiciary, state and city government, and public defense. Here the power of the party in legislation and administration is analysed and explained with penetration and justice; and the influence of the party on the growth of nationalism, in the unification not only of the country but of our tripartite organization of government, is set forth lucidly and convincingly (pp. 320-324). In this connection the position of the president in the party system as well as in the government is noted as being the chief agency of nationalism. The author truly is to be thanked also for striking a new note in his consideration of American cities. We are familiar enough with the oft rung changes on Lord Bryce's famous criticism; it is refreshing to have some one find that the indictments against our cities are far from true, that many excellent results in municipal government may be enumerated, and that these results are attained against obstacles and hindrances unknown to the cities of Europe.

A few errors in statements of fact may be passed over. They do not constitute as serious a fault as a certain looseness of expression. For example, in the course of an argument to prove that no such things as "wage slavery," etc., exist in the United States, it is said: "Where there is absolute equality of opportunity the equality of political and civil rights ensues" (p. 328). This may be true but it seems to run counter to the entire argument, for apparently the author is trying to show that equality of opportunity follows equality of political and civil rights. Incidentally it may be noted that if there were equality of opportunity there would be no special need for equal political and civil rights. Perhaps only insufficient care in preparing

manuscript for the publisher is here indicated. Taken with some other inconsistencies it seems to show failure on the part of the author to knit his work closely together. For example, he speaks on page 11 of the president's "unforeseen and undesirable power" (due partly to his position as party leader), and later (p. 329) says "the presidency of today as molded by party government is inherently a finer office than at the outset," adding that "the assumption by idealists to the contrary does great harm." Again, the statement that "there can be no single guiding impulse in Congress, since in both Houses the party caucus has asserted its supremacy as to committees, program and formulation of bills" (p. 305) may be compared with this one: "To harmonize different elements and secure concerted action, the caucus performs the duty of a British premier" (p. 355).

VICTOR J. WEST.

The Individual Delinquent. By DR. WILLIAM HEALY. (Boston: Little, Brown and Company, 1915. Pp. 830.)

Five years of work made possible by Mrs. W. F. Dummer and by the judges of the Chicago Juvenile Court form the foundations of William Healy's book. He devotes 182 pages to his introduction, methods and treatment, and then gives his casuistic material (pp. 183-788) under the headings of heredity, factors in developmental conditions, physical conditions, stimulants and narcotics, environmental factors, deliberate criminalism and its mental habits, the meaning of mental conflicts and repressions, abnormal sexualism, epilepsy, mental defect, mental dullness on account of physical conditions, psychic constitutional inferiority, mental aberration and peculiarities, and forms of pathological tendencies to crime. A bibliography of nearly 400 titles and an account of the organization of the Juvenile Psychopathic Institute conclude the volume. One hundred and seventy-six cases are given in summary, with a very concise table summing up the principal items in each case. In many cases a fairly full case-record is supplemented by a statement of the results of a set of standard tests in part developed by Dr. Healy and his co-workers. In some of the cases an account of the disposal of the case and of the follow-up work is given.

The mass of material is fairly and squarely put before us, without undue telescoping, and with a very lucid disposition of the multiplicity of issues. The preface states that the book has "gradually

assumed the scope of a text or reference book, the first on the subject." What are its merits and its results?

Dr. Healy's task is not a specially enviable one. He has to pave the way for detail study. On the practical side and on the research side exacting demands are apt to be made, far exceeding the present opportunities. Between the two extremes Dr. Healy is giving us a sensible survey, using chiefly the repeated offender, i.e., the individual most likely to have a personal bias or defect. Comparing the book with such studies as Tarnowsky's *Homicidal Women* or the general works on criminology, one is struck by the close touch with the actual world and a sanely optimistic, progressive, and constructive spirit. The range of problems is staggering. Yet many topics have received a fairly comprehensive treatment with reviews of and guidance into available literature. The style and general exposition are clear and the index very helpful.

With this survey, the ground is prepared for the more clearly monographic treatment of many issues which this book does not claim to settle. It may be that certain critics will feel dissatisfied not to find everywhere a ready-made decision as to what to do next. Healy has very wisely given more space to concrete cases and less to impossible attempts at advising everyone how to make unnecessary the reform of our judicial and penal methods or how to achieve the reforms needed. It is hoped that the book will be widely read and freely consulted; it will not fail to be a most valuable guide, philosopher, and friend to both the practical worker and to the investigator of detail.

Nobody can read this work without becoming convinced of the tremendous importance of giving the individual case the most careful study. It is not for us to judge whether the formal tests will make unnecessary the deeper psychodynamic analysis of each case. A reasonably good study of a reasonable number of cases is the first standard to aim at, and this is what Healy's book shows us how to achieve.

ADOLF MEYER.

The Dread of Responsibility. By ÉMILE FAGUET. Translated from the French by Emily James Putnam. (New York: G. P. Putnam Sons, 1914. Pp. xv, 221.)

M. Faguet is usually thought of as a literary critic, but in recent years he has contributed some very interesting studies to the literature

of French politics. Among these are his *Problèmes Politiques, Le Cult de l'Incompétence and l'Horreur de Responsabilité*, in all of which he subjects the French democracy to a searching criticism. We are now offered a very satisfactory English translation of the last mentioned of these books. The thesis which the author maintains is that what seems to be a dread of responsibility permeates the whole public and private life of the French. It shows itself in their legal ideas and customs, in their professions, and in their political habits and customs. Judges do not decide their cases in accordance with equity, but according to law. This makes them mere clerks or registering machines, and relieves them from all moral responsibility for rendering justice. They have merely to declare the law, and it is therefore the law and not the judge that is responsible. He severely criticizes the present régime as one which places the judiciary under the domination of the executive power, the result of which is that the judges decide as they are directed by the government. The responsibility, therefore, is shifted from the judiciary to the government, at least in all cases in which the government is an interested party. Indeed, he says, judicial power no longer exists in France (70). This criticism is not justified. French judges serve for life and they are irremovable by the government. They are as independent as judges can be, and M. Faguet does not furnish the proof of their subserviency to the government. He also complains of the interference of deputies in judicial matters, but here again his criticism is mere assertion and there is no evidence offered to show that judges in any particular case have been influenced by deputies in reaching their decisions. His criticism of the French Judiciary has been successfully reputed by a writer in the *Revue Politique et Parlementaire* for May 1912. Much of the French procedure is open to criticism but the charges which M. Faguet makes concerning the subserviency of the judges to the government have no foundation.

What he says of the irresponsibility of the judiciary resulting from the jury system is more defensible, but that is inherent in the system of trial by jury, and it is to be found in all countries where the determination of the guilt of the accused rests with the jury rather than with the judge. It is, therefore, not peculiar to France.

Again he asserts that the political constitution of the French at the present time is founded on universal irresponsibility. Under the old régime there was a very real responsibility, that of the king, but the custom of the constitution of the Third Republic makes the president

a cipher. In other words, there is no president (172). He has no duty but to do nothing and to say nothing. Responsibility is so divided, subdivided, and dispersed that no one can say of any man *is fecit*. The governing power is parliament, not the ministers, which is another way of saying that there is no responsibility.

However, M. Faguet's criticism of the French democracy is incisive and exceedingly interesting. Much of what he says in regard to the absence and apparent dread of responsibility both in the governmental organization and in the political and social customs of the French is true—and it is not peculiar to the French alone—but sometimes, notably in his criticism of the judiciary, his views are extreme and not founded on facts.

J. W. GARNER.

The Passing of the Great Reform Bill. By J. R. M. BUTLER.
(New York: Longmans, Green and Company, 1914. Pp. xiii, 454.)

The Genesis of Parliamentary Reform. By GEORGE STEAD VEITCH, with introduction by Ramsay Muir. (London: Constable and Company. Pp. xxxi, 397.)

Mr. Veitch's *The Genesis of Parliamentary Reform*, and Mr. Butler's *The Passing of the Great Reform Bill*, have a special interest for me—an interest greater than for most students of English history. It is an interest that can easily be explained; for in 1903 when my *Unreformed House of Commons* was published, I expressed the hope that it would be my fortune also to write the history of parliamentary reform. "At some future time," I then wrote, "I may write the history of the movement for parliamentary reform from the time of Queen Elizabeth to the acts of 1884–1885 extending the franchise in the counties and finally breaking up the old system under which knights of the shire were so long chosen to Westminster. Then I hope to trace the varying phases of the movement; how at one time it was sporadic, represented only by isolated movements for wider franchises in individual boroughs; how at other times, as during the Commonwealth, it was general; how it was aided by the American revolution; how partial success came in 1832; and how in later years the movement was revived and resulted in the reform acts of 1867 and 1884. The research for the history of the movement has already been done. At the outset it was my purpose to include in one work the

history of the movement for reform and to bring the history down to 1884. But the wealth of material regarding the old systems of representation, and the desire to present an adequate history of the representation in Scotland and Ireland, and of the unions of 1707 and 1800, so far as representation is concerned, seemed to make it expedient to defer to a later volume the history of the long contest which ended in 1885."

Eleven years have elapsed since this hope was expressed. Circumstances have not permitted of its realization. All that has since been done has been the addition to my notes of much new and valuable material from the rich and varied stream of English political biography and social and industrial history that has flowed from the press since my two volumes were completed. It is consequently with peculiar pleasure and satisfaction that I welcome the exceedingly valuable contributions that Mr. Veitch and Mr. Butler have made to the history of parliamentary reform. If they or other equally competent and sympathetic students of the long struggle in England for a democratic system of parliamentary representation will write the history of the reform acts of 1867 and 1884-1885, I may, I think regard myself as liberated from the undertaking I gave in 1903. Neither of the two later reform acts—or rather the popular struggles for these acts and their parliamentary vicissitudes—has quite the vivid and abiding interest that attaches to the struggle, half a century long, for the great act of 1832, and its fortunes in the Grey cabinet, in the house of commons, and in the house of lords.

The literature of the political history of England in the nineteenth century cannot be regarded as complete until there are adequate histories of the extensions of the franchise in 1867 and 1884. But chief interest in the movement for parliamentary reform, the movement that began after the revolution of 1688, must always center in the epoch-making struggle that went on from the American revolution to 1832. It is scarcely conceivable that this tremendous struggle, always waged against great odds, could have found more sympathetic or more capable twentieth century historians than Mr. Veitch and Mr. Butler. As far as appears on the surface there has been no collaboration between them. Each apparently has worked independently of the other, although Mr. Butler cordially acknowledges his indebtedness to Mr. Veitch's research as embodied in the *Genesis of Parliamentary Reform*. But had the two authors been in continuous collaboration they could not have divided better than they have done

the period from the American revolution to 1832 or produced a more harmonious result.

Mr. Veitch is concerned only with the agitation for reform. He deals with the vicissitudes of the movement; with the men who did the parliamentary and platform work; who wrote the pamphlets, the resolutions, and the manifestoes and all the other voluminous literature of the great propaganda. He also deals with the working and interweaving of the various associations—London, provincial and Scottish—that were organized to effect a reform of the representative system that was admittedly more than two and a half centuries overdue. His history closes with the incoming of the Whigs and the Grey administration in 1830.

Mr. Butler has an introductory chapter of much value sketching political conditions and the reform agitation in the period between 1769 and 1829, when the Wellington administration collapsed owing to the exhaustion of the old Toryism, and the internal dissensions in the Tory party resulting from the concession of Catholic emancipation by Wellington and Peel. But Mr. Butler's real work—his distinct and valuable contribution to the history of parliamentary reform—begins with the downfall of the Wellington administration at the end of 1829; and 364 out of his 426 pages are devoted to the two eventful years from 1830 to 1832—the two years which witnessed the final struggle in and out of parliament for the first reform bill, and the end of a representative system which had been admitted to be antiquated and decayed, and urgently in need of reform, as far back as the reign of Queen Elizabeth.

Editors despite, personal equation sometimes creeps even into reviews; and if one of these books appeals a little more strongly to me than the other, it is Mr. Veitch's *Genesis of Parliamentary Reform*. The book makes this appeal because I am familiar with the intricacies of this movement from the American revolution to the incoming of the Grey administration. I have realized the enormous painstaking labor necessary to trace out the many organizations—some with aristocratic supporters, others exclusively popular in their leadership and character—that came into existence to work for reform; to determine the relations of these numerous organizations with each other; to ascertain why this Whig reformer who was of the house of commons or the house of lords threw in his lot with Grey and the Friends of the People, while other Whig reformers withheld their support from this and the other associations in London and in the com-

paratively few old urban constituencies in provincial England where a foothold could be secured for the movement.

Mr. Veitch's success with this part of his task is complete and outstanding; and nowhere is it more obvious than when he is uncovering the relations of some of these reform associations with the revolution clubs in Paris and provincial France. Mr. Veitch is equally successful in describing the efforts and influence of the men who were of the counter-movement to reform. This part of his work was quite as much worth while as the difficult task of disentangling the relations of the British reform organizations with the French clubs; for the counter-movement to reform, which began in 1793, with the single exception of the counter-movement to Irish home rule, that was continuous from 1886 to 1914, is the most remarkable counter-movement in the history of England from the civil war of the seventeenth century to the European war of 1914-1915. Remarkable and full of interest as it is, there had been no attempt at an adequate history of it until Mr. Veitch's *Genesis of Parliamentary Reform* was published. An enormous amount of work has gone into the appendices to this book; into the bibliography, which extends to twenty-one pages, as well as into research for the text. Some compensation will surely come to Mr. Veitch for all this careful work and the admirably written history of the agitations from 1780 to 1830, in the high rank that his book will take among monographs on the history of England in the period from the Declaration of Independence to the beginning of the reign of Queen Victoria.

Mr. Butler's history of the reform bills for which the Grey administration was responsible is largely based on the memoirs of the statesmen and politicians of this era—a large library in themselves, with only the official biographies of Grey and Althorp still lacking. But Mr. Butler has had access to the papers of Grey, and also to those of Althorp and Durham; all of which, especially those of Grey and Althorp, throw much new light on the inner history of Grey's administration and on the framing of the reform bills and their vicissitudes in the cabinet and in parliament. It cannot be affirmed that Grey's place among British statesmen is enhanced by the new material of which Mr. Butler has availed himself. The history of the two years from 1830 to 1832 might have been of much smaller importance as regards progress towards democracy, had not Grey's son-in-law, Durham, been in close family and political association with Grey; and not quite all the credit that is due to Durham for keeping Grey's courage at the sticking point is accorded to him by Mr. Butler.

With good judgment Mr. Butler devotes comparatively few of his pages to the debates on the reform bills in the house of commons and the house of lords. There are few quotations from the *Hansards* of 1830–1832. The arguments for and against reform as they were put forward at the different stages of the bills easily admit of summary; but it would seem that some of the pages saved by this wise discretion might have been devoted to a description of the house of commons that passed the reform bill—to a comparison with the house of commons, for instance, that passed the budget of 1909 and thereby brought on the collision with the house of lords, and the lord's veto act of 1911. This is merely a suggestion, not a criticism; and I have nothing but commendation for Mr. Butler's book, and the mosy hearty commendation for his admirable use of the biographical material and letters on which his history of the Grey cabinet and of the framing of the reform bills are based; for his excellent chapters on industrial and social conditions in England on the eve of the reform bill; and on opinions and ideas as these were manifested after the dissolution of parliament in April 1831.

Mr. Veitch's and Mr. Butler's books are from different publishing houses. But they are companion volumes, and a student of the *Genesis of Parliamentary Reform* will inevitably move on to the *Passing of the Great Reform Bill*, as a reader of a novel on finishing one chapter turns to the next. Mr. Butler, it should be added, in his preface makes the announcement that Mr. George Trevelyan is now at work on the *Life of Grey*, based on the papers at Howick. This is a welcome announcement; for with the memoir of the Whig leader of the reform era available, the only official biographies of English statesmen of the period from Waterloo to the invasion of Belgium still lacking will be those of Althorp, Harcourt, Salisbury, Campbell-Bannerman, and Chamberlain.

EDWARD PORRITT.

Thirty Years. Anglo-French Reminiscences (1876–1906). By SIR THOMAS BARCLAY. (Boston and New York: Houghton, Mifflin and Company. 1914. Pp. viii, 389.

The author of this interesting volume of memoirs is widely known as "the man behind the *entente*." He went to Paris in 1876 as correspondent for the *London Times*. In 1882 he gave up journalism and devoted himself to the practice of law in the French courts. In 1899

he was elected president of the British chamber of commerce in Paris, and taking advantage of the opportunity which this position offered, he started the public agitation for more friendly relations between England and France which resulted in the Anglo-French treaty of 1904. In recognition of his services in that behalf he was knighted by King Edward VII.

It is of course in connection with the present European war that this volume is of special interest. The *entente*, our author claims, produced "lateral" results that were wholly unforeseen. It was perverted from an instrument of peace into a menace of war. Its object was to insure peace between England and France; it was soon interpreted as a threat against Germany. Nothing, according to Barclay, could have been further from the purposes of its promoters. In this connection he says:

"Never was there an idea among them of a joining of forces against another Power. The *rapprochement* had the exclusive and deliberate object of counteracting hostile tendencies between Great Britain and France. Its sole object was to bury the hatchet between them without *arrière-pensée*. Nor did anybody in England imagine that it might ever be used as leverage against a third Power. Even in France, the only suggestion of a *pointe* against Germany was an observation by M. de Pressensé that the *entente* would save England from joining the Triple Alliance.

"Nor, as will be seen, did Germany till long after the *entente* had become a *fait accompli* regard it as having any character of hostility to herself."

The volume as a whole is interesting and entertaining. It contains some rather good characterizations of men and measures, but it is not a profound work and the ill concealed egotism of its author detracts from its impressiveness.

JOHN H. LATANÉ

The Principles and Practice of Prize Law. By VISCOUNT TIVERTON. (London: Butterworth and Company, 1914. Pp. xix, 218.)

In accordance with the purpose announced in his preface the author deals "very shortly with both general principles and practice obtaining in the prize court." Published subsequent to the outbreak of the present war and containing all the official data available on the subject,

the book has great value for general reference as well as for lawyers and others specially interested in admiralty law and procedure. In consulting this work, however, one should take into consideration the various orders in council modifying the law of prize which have been promulgated by the British government since the publication of the book.

Of particular interest is that portion of the book dealing with the sources of prize law and with the nature of that law, though it is greatly to be regretted that the author did not see fit to support his views with adequate arguments. His treatment of the subject is most cursory.

Municipal law looms very large in the estimation of the author. His attitude strongly suggests that, international law, treaties and orders in council notwithstanding, the prize court may reserve to itself an extraordinary liberty of action. "Treaties and orders in council," says Tiverton, "are no part of the municipal law unless and until they are made so by act of parliament." He further says on page 6:

"The municipal law of prize is somewhat complex. It depends upon a number of rules of law which theoretically are supposed to be the laws of all nations. Unfortunately, however, all nations do not agree as to what those rules are. The essential difference between the authority of a decided case in prize law and common law is this. At common law the decision is that such and such a proposition is and always has been law. In prize law it merely amounts to a decision that at that moment and between those two Powers such and such a proposition is law. And this follows from a strong principle underlying prize law, namely, that the law must be mutual. . . . Lord Stowell justified an alteration in the law by the outrageous conduct of belligerent cruisers, but reverted to the old law as soon as the outrage ceased . . . it may well be that a decision of Lord Stowell's, though good law at the time, is good law no longer, even though there has been no act of parliament reversing the decision."

It would seem evident from such reasoning that interested parties in cases before British prize courts can have no certainty in respect to their rights. One is tempted to apply to these courts the remarks of Selden concerning the Court of Chancery:

"Equity is a roguish thing; for the law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make his foot the standard. For if the measure we call a chancellor's foot, what an uncertain measure this would be!"

The uncertain and arbitrary manner in which prize courts may render decisions is illustrated in the general law laid down by Tiverton. In some instances he quotes from the Declaration of London. In others he quotes from leading cases in prize law, with the result that it is difficult to predicate what the court itself may do. For example, on page 14 he quotes the case of *The Friendship* to show that "persons in the military or naval service of the enemy or in the civil service who will be intimately connected with the war are contraband and may be made prisoners of war." He thereupon quotes Article 47 of the Declaration of London which as a matter of fact deliberately avoided the analogue of contraband in this connection and expressly limited the right of capture to "any individual embodied in the armed forces of the enemy," etc.

So likewise with the question of despatches which he again denotes as "contraband" in accordance with the decisions in *The Carolina* and *The Atalanta*, though the Hague Convention relative to capture in maritime war, which he quotes with approval, does not admit this analogue or permit the seizure of correspondence of any sort.

It is of especial interest to note that according to Tiverton—assuming of course that the Declaration of London was good international law—emphasizes the fact that a blockade "must not extend beyond the ports and coasts belonging to or occupied by the enemy, nor bar access to neutral ports or coasts." Under this ruling the British orders in council establishing virtually a blockade of a modified variety against commerce with Germany through Holland would not be legal. It was for reasons such as these undoubtedly that Great Britain preferred to consider the Declaration of London as no longer binding in spite of the fact that it was formally accepted with emendations at the outset of the war.

There are other points of interest which might be raised if the limits of this review permitted. Enough has been indicated perhaps to emphasize the fact that the book in question is most timely and contains data of very great value.

PHILIP MARSHALL BROWN.

Harrington and his Oceana. By H. F. RUSSELL SMITH. (Cambridge University Press, 1914. Pp. 223.)

This is an excellent study of the nature and influence of one of the most interesting of political utopias. The author discusses briefly Har-

rington's life and political ideas, showing the relation of his thought to the events of the Civil War and Commonwealth in England, and tracing the influence of his teachings on the subsequent two centuries of English thought. The fundamental principles of Harrington's theory are shown to be (1) the connection between political power and land holding and the importance of the possession by the governing class of an adequate proportion of land, (2) the value of the political devices of the ballot, indirect election, rotation in office, and a legislative system of two chambers in which the functions of debating and voting are separated. In showing the influence of Harrington on his contemporaries, the author has made considerable investigation into the pamphlet literature of the time.

The most interesting section of the book traces the connection between Harrington's ideas and the political institutions of the United States and of France. The connection between the "Oceana" and the utopian schemes of colonial government attempted in Carolina and New Jersey is indicated, and plausible but not conclusive evidence is given to show Harrington's influence on William Penn and his system of government in Pennsylvania. Again, in the Revolutionary period, Harrington's ideas were popular in America, especially through the work of John Adams and his interest in the ballot. In France, Harrington's influence on Sieyès is emphasized, the connection between the "Oceana" and several of the written constitutions of the Revolutionary period is indicated, and the application of Harrington's doctrines in the redivision of France into artificial territorial units, as planned by Sieyès and made permanent by Napoleon, is pointed out. While the similarities between American traits of character and Harrington's ideals are somewhat overdrawn (pp. 152-153), the book is a valuable contribution to the history of political theory.

RAYMOND G. GETTELL.

Progressive Democracy. By HERBERT CROLY. (New York: Macmillan Company. Pp. vii, 438.)

In this work Mr. Croly considers at large the question "whether any substitute is needed for the traditional system and whether progressivism offers any prospect of living up to the manifest requirements of the past." Upon both points Mr. Croly makes answer in the affirmative. His work is a thoughtful, interesting discussion of the passing away of old ideals and the formation of new ones. But like Mr. Croly's

pervious writings in this field he inspires more than he instructs. There is a lack of concreteness in his proposals; he sets forth ideals, but when it comes to the matter of finding ways and means of realizing them the discussion barely escapes sinking into verbalism and futility. Thus the value of the work is more symptomatic than positive, and to enjoy it one should not expect to gather definite notions as to procedure but rather light upon the present situation and visions of the ultimate goal. This limited value is, however, an actual value. As a means of preparing public opinion for the changes in political structure required by expanding social needs, the work is probably more serviceable than if it were more constructive. It ranks high in literary quality. The style has vitality. One feels that here is something that is not built up by library carpentry but comes warm and fresh from the world's life.

HENRY JONES FORD.

The Political Science of John Adams. By C. M. WALSH. (New York: G. P. Putnam's Sons. Pp. xii, 374.)

This book is an addition to our political literature of distinct value. It is well known to students of our constitutional history that the works of John Adams are a huge storehouse of information on the political ideas of the period in which American state and national constitutions took shape. Mr. Walsh performs a great service by making an exhaustive analysis of John Adams' ideas of constitutional government, with copious historical annotation. The work is a masterly performance, done with a range of information that puts it in a class apart from that of the special monograph although it possesses monographic completeness.

In addition to exhibiting John Adams' opinions as to the tripartite division of the powers of government, the work surveys the results of the practical application of that theory in the actual organization of American government and reaches some radical conclusions which are set forth in the last chapter. In essence they propose the conversion of the Senate into a sort of privy council by a drastic process of reorganization. Its present power to amend tax and appropriation bills should be taken away, but it may return such bills to the House with recommendations. Its negative on all bills should be only suspensive. It should advise during the negotiation of treaties but the House alone should accept or reject. It is obvious that such arrangements would

provide plentiful occasion for legislative deadlock. This is to be counteracted by providing that when enactment has been frustrated by the Senate, the bills affected shall be regarded as suspended until the next congressional elections after which the House can pass those particular bills without the concurrence of the Senate. That is to say, the Senate is to be confined to an advisory function much like that now exercised by the British House of Lords. To better fit it for the discharge of such function, its membership is to be augmented by the addition of all ex-Presidents, "the oldest ex-governors of the States" and perhaps the justices of the Supreme Court. The idea seems to be to make the Senate as inclusive of public wisdom and experience as the Roman Senate. This is certainly a large programme and it appears rather fantastic from the standpoint of practical politics. Indeed, the value of the work is in the matter of exposition rather than in practical recommendation, but its value in this respect is very marked.

HENRY JONES FORD.

The Modern City and Its Problems. By FREDERIC C. HOWE, PH.D. (New York: Charles Scribner's Sons, 1915. Pp. x, 390.)

Dr. Howe's latest volume covers a wide range of time and area. It is a story of how the modern city has come to be, of what its present problems are, and of the only way in which the author thinks these problems can ever be solved. In the opening chapters Dr. Howe takes a few strides down the ages, touching the high points as he goes. There is an epitome of city history—an *Ueberblick*, as the Germans would say—from the fall of the Roman Empire to the English Municipal Corporations Act of 1835—fourteen centuries in ten pages. This snapshot is certainly not blurred by over-exposure. Then come general surveys of contemporary municipal conditions and problems, charter-making, city planning, police and fire-protection, housing, sources of city revenues, and the relation of the municipality to the public service corporation. These discussions relate not only to methods and shortcomings in America but to the policy and achievements of European cities as well. They are in considerable part a re-statement, in slightly different form, of the facts, opinions and prophecies which Dr. Howe has given us in his earlier books.

The author writes cogently and does not burden his readers with needless details. He has the art of putting his pages into forceful

English; and he is not afraid to make known his own clean-cut opinions on any point. These are qualities which would give real value to any book. On the other hand the serious student of municipal affairs has nowadays come to expect something more than rapid generalizations which dissolve the most complex problems into naked simplicity and solve them in the twinkling of an eye. If all our municipal quagmires are so easily sidestepped as this book implies, what a marvel that both the saints and sinners of American public life keep stumbling into them with such blind perversity!

Europe has met and conquered every obstacle in the way of efficient civic administration, we are assured, and apparently by the application of a few simple formulas. "Railways and waterways are definitely coördinated into the city plan" (pp. 230-231). That, of course, has untangled all problems of local transportation abroad. The German city follows "a conscious programme of human efficiency" (p. 272), hence its social problems dissipate like mists before the noonday sun. The bread-ticket development of the past few months, however, give a touch of grim irony to Dr. Howe's glowing vision of the German *Hausfrau* who "receives her fresh vegetables, poultry, butter, and flowers along with the morning mail" (p. 263), and is thus so blithely relieved by a beneficent parcel-post-paternalism from all the worries of daily marketing. In America, alas, we have the parcel-post machinery; but the high-cost-of-living still sticketh closer than a brother. Why this should be the author does not make clear, save to assure us that he at least has no stomach for those "personal interpretations of politics" which put any of the blame on "the people."

Dr. Howe's civic philosophy as set forth in this volume can be summed up in two propositions. Individualism and laissez-faire have cursed the American city; all our troubles go back to constitutions, laws, limitations and policies based upon these unholy shibboleths. We must accordingly seek relief by completely socializing our community standpoint, and Europe has shown us the way. A book which professes these doctrines so frankly and maintains them so vigorously is surely worth reading whether one agrees with them or not.

WILLIAM BENNETT MUNRO.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

Library of Congress

UNITED STATES

Address of the President of the United States at Indianapolis, Ind., Jan. 8, 1915. 1915. 13 p. 8°.

Address of the President of the United States at the Mid-Year Conference of the American Electric Railway Association, Washington, D. C. Jan. 29, 1915. 1915. 10 p. 8°.

Address of the President of the United States before the United States Chamber of Commerce . . . Washington, D. C. Feb. 3, 1915. 1915. 11 p. 8°.

Alaska, General Information Regarding the Territory of. 1914. 36 p. 8°. *Dept. of Interior.*

Alaska, Government in. Hearings before the House Committee on the territories . . . on H. R. 15763 . . . pt. 1-2. 1914. 95 p. (continuous paging.) 8°. *House of Representatives, Committee on the Territories.*

Alston G. Dayton, United States District Judge for the Northern District of West Virginia, Official Conduct of. Report from House Committee on the Judiciary. [To accompany H. Res. 541.] [1915.] 8 p. 8°. House report 1490. *House, Committee on the Judiciary.*

Breach of International Obligations Imposed upon the United States by the Law of Nations or by Treaty, Supplemental brief in support of the power of the executive (in the absence of legislation by Congress.) to prevent a. 1915. 42 p. 8°. *Dept. of Justice.*

Note: Prepared by Charles Warren, Assistant Attorney General.

Child-labor Bill. Report from House Committee on Labor (to accompany H. R. 12292) House Report No. 1400. 1915. 50 p. 8°. *House of Representatives, Committee on Labor.*

Children in the District of Columbia, Legislation Affecting, Letter from the Attorney General transmitting supplement to annual report . . . for 1914, embodying first report of committee appointed by the Attorney General to study need for legislation affecting children in the District of Columbia, including drafts of new juvenile court laws. 1915. 82 p. 8°. House Document 1661. *Dept. of Justice.*

Colorado Strike Investigation, Report on the. Made under H. Res. 387. 1915. 53 p. 8°. House Doc. 1630. *House, Committee on Mines and Mining.*

Constitution, Jefferson's Manual, and Rules of the House of Representatives of the U. S. with a digest of the practice. 63d cong., 3d sess., by Bennet C. Clark, clerk at Speaker's table. 1915. 680 p. 8°. *House of Representatives.*

Copyright, Decisions of the United States Courts Involving. 1913-1914. Copyright Office bulletin No. 17. 1915 105 p. 8°. *Library of Congress, Copyright Office.*

The Department of Commerce. Panama-Pacific International Exposition edition. 1915. 71 p. 12°. *Department of Commerce.*

Note: This pamphlet briefly summarizes the organization and functions of the department of commerce and its bureaus.

District of Columbia to the Federal Government, Relation of. Indicating the connection, in regard to both its revenues and its expenses, which ought properly to exist between the government of the District of Columbia and the Treasury of the United States [article by John Altheus Johnson.] 1915. 9 p. 8°. House of Rep. Doc. 1488. *House of Rep.*

District of Columbia with the United States, General Account of. Report of the subcommittee of the House Committee on the District of Columbia appointed under H. Res. Nos. 154 and 200, 62d cong., 1st sess., and Resolution 203, 63d cong., 3d sess. . . . 1915. 46 p. 8°. H. of R. Doc. 1627. *House, Committee on the District of Columbia.*

Divorce, References on . . . Submitted to the Committee on the Judiciary, U. S. Senate . . . in connection with S. J. Res. 109, a resolution proposing an amendment to the constitution of the U. S. relating to divorces. Prepared under the direction of Hermann H. B. Meyer, Chief Bibliographer, Library of Congress. 1915. 110 p. 8°. *Library of Congress.*

Europe and International Politics in Relation to the Present Issue, List of References on. Compiled under the direction of Hermann H. B. Meyer, Chief Bibliographer, Library of Congress. 1914. 144 p. 4°. Price, 15c. *Library of Congress.*

Federal Reserve Act and Amendments, Index-Digest of the. Act of Dec. 23, 1913, Aug. 4, 1914, Aug. 15, 1914, Mar. 3, 1915. 1915. 490 p. 8°. *Federal Reserve Board.*

Federal Reserve Board, First Annual Report of the, for period ending Dec. 31, 1914. 1915. 218 p. 8°. House Doc. No. 1523. *Federal Reserve Board.*

Government of the Philippines. Hearings before the Committee on the Philippines, U. S. Senate . . . on H. R. 18459, an act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands and to provide a more autonomous government for the islands. 1915. 764 p. 8°. *Senate, Committee on the Philippines.*

Home Owning and Housing of Working People in Foreign Countries, Government Aid to. 1915. 451 p. 8°. Bulletin, U. S. Bur. of Labor Statistics, 158. House Doc. 1441. *Bureau of Labor Statistics.*

Indian Affairs, Joint Commission to Investigate. (Report of the commission) (1915) 12 p. 8°. House Doc. 1669. *Joint Commission to Investigate Indian Affairs.*

Note: This commission was created under the act making appropriation for the Indians, etc., for the fiscal year ending June 30, 1914, "for the purpose of making inquiry into the conditions in the Indian Service . . . conduct and management of the Bureau of Indian Affairs and of recommending such changes in the administration of Indian affairs as would promote the betterment of the service and the well being of Indians."

Industrial Relations, Commission on—First annual report. 1914. 79 p. 8°.

Invalid Legislation. The power of the Federal judiciary to declare legislation invalid which conflicts with the Federal Constitution, by David K. Watson of the Columbus (Ohio) bar. 1915. 11 p. 8°. Senate Doc. 964. *Senate*.

Labor Exchanges. An article suggesting "a national system of labor exchanges." By John B. Andrews, Secretary American Association for Labor Legislation. 1915. 14 p. 8°. Senate Doc. 956. *Senate*.

Legislation Affecting Children in the District of Columbia, Including Drafts of New Juvenile Court Laws, Supplement to annual report of Attorney General . . . for the year 1914 embodying first report of committee appointed by the Attorney General to study need for. 1915. 82 p. 8°. *Dept. of Justice*.

Merchant Marine, Foreign Legislation on the: Letter before the Committee on Commerce, United States Senate . . . transmitting certain material which the Legislative Reference Division of the Library of Congress has gathered relating to foreign legislation on the merchant marine. 1915. 31 p. 8° *Senate, Committee on Commerce*.

Merchant Marine. Report of (Senate) committee on . . . relative to pending congressional bills providing for government ownership and operation of merchant vessels "in the trade between the Atlantic, Gulf, or Pacific ports of the United States and the ports of Central and South America and elsewhere." 1915. 9 p. 8°. Senate Doc. 715. *Senate, Committee on Merchant Marine*.

National Employment Bureau. Report of House Committee on Labor (to accompany H. R. 19015). 1915. 8 p. 8°. *House of Representatives, Committee on Labor*.

Note: H. R. 19015 aims to establish a national employment bureau in the department of labor.

National University of the United States. (1915). 6 p. 8°. House Report 1433. *House of Representatives, Committee on Education*.

Navigable Waters of the United States, Rules and Regulations Relating to . . . 1915. 171 p. 8°. *War Department, Office of Chief of Engineers*.

Note: Does not include rules and regulations of northern and northwestern lakes and tributaries, which are printed in the U. S. Lake survey bulletins.

Neutrality. Correspondence between the Secretary of State and Chairman Committee on Foreign Relations, relating to certain complaints made that the American government has shown partiality to certain belligerents during the present European war. 1915. 14 p. 8°. Senate Doc. 716. *Senate*.

New York State Bar Association. Report of the committee on the duty of courts to refuse to execute statutes in contravention of the fundamental law, presented at the thirty-eighth annual meeting of the New York State Bar Association held at the city of Buffalo, Jan. 22 and 23, 1915. 1915. 61 p. 8°. Senate Doc. 941. *Senate*.

The Officers Training Corps of Great Britain. The Australian system of national defense; the Swiss system of national defense. 1915. 159 p. 8°. Senate Doc. No. 796. *Senate*.

The Parcel Post. Report of the joint committee to investigate the general parcel post. Dec. 1, 1914. 1915. 83 p. 8°. Senate Doc. No. 941. *Congress. Joint Committee to Investigate the General Parcel Post*.

Philippine Islands, Future Political Status of the People of the. Report from Senate Committee on the Philippines. (To accompany H. R. 18459.) [1915.] 4 p. 8°. *U. S. Senate, Committee on the Philippines.*

Pollution of Boundary Waters Between the United States and Canada, Hearings of the international joint commission in re remedies for the. 1915. 33 p. 8°. *International Joint Commission.*

The Preferential Ballot as a Substitute for the Direct Primary. Address before the National Popular Government League at the Second National Conference held in Washington, D. C., on Jan. 4, 1915, delivered by Lewis Jerome Johnson, Harvard University. 1915. 23 p. 8°. Senate Doc. 985. *Senate.*

Reconstruction, Journal of the Joint Committee on . . . 39th Cong., 1st sess., appointed pursuant to the concurrent resolution of Dec. 13, 1865, with direction "to inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they or any of them are entitled to be represented in either House of Congress, with leave to report by bill or otherwise." 1915. 53 p. 8°. Senate Doc. 711. *Senate.*

The Rights of Neutrals. Address on the rights of neutrals in the light of the new problems presented by the present European war, before the governing board of the Pan-American Union at Washington, Dec. 8, 1914, by Hon. Romulo S. Naon, Ambassador from Argentina. 1915. 5 p. 8°. Senate Doc. 801. *Senate.*

Seaman's Bill. Conference Report: (to accompany S. 136). [1915.] 30 p. 8°. H. of R. Report 1439. *House, Committee on Conference.*

Senate of the United States, Standing Rules for Conducting Business in the. With rules for the regulation of the Senate wing of the United States Capitol, adopted by the committee on rules, corrected to Jan. 1, 1915. 1915. 73 p. 8°. *Senate, Committee on Rules.*

The Shipping Bill. Address delivered by Hon. William G. McAdoo, Secretary of the Treasury before the Commercial Club, at Chicago, Ill., on Jan. 9, 1915. 1915. 18 p. 8°. (Senate Doc. 713.)

Note: Address concerns the merits of S. 6856, a bill to authorize the United States to subscribe to the capital stock of corporations having for their purpose the purchase and operation of merchant vessels in the foreign trade of the United States.

Shipping Bill, The Administration and the. Address delivered by Hon. William G. McAdoo, Secretary of the Treasury, before the Chamber of Commerce of the United States, at the annual meeting held in Washington, D. C., on Feb. 4, 1915. 1915. 23 p. 8°. Senate Doc. 950. *Treasury Department.*

Shipping Bill, The Opposition and the. Address before the National Chamber of Commerce at the annual meeting held in Washington, D. C., on February 4, 1915, by Hon. Theodore E. Burton, Senator from Ohio. 1915. 16 p. 8°. Senate Doc. 949. *Senate.*

Sickness Insurance, Its Relation to Public Health and the Common Welfare. By B. S. Warren, Surgeon, U. S. Public Health Service, Sanitary Adviser, United States Commission on Industrial Relations. Reprint No. 250 from the Public Health Reports. Jan. 8, 1915. 1915. 14 p. 8°. *Public Health Service.*

Statistical Atlas of the United States. Prepared under the supervision of Charles S. Sloane, Geographer of the Census. 99 p. 503 plates. 4°. *Department of Commerce, Bureau of the Census.*

Steamship "Dacia," Purchase of. Statement of the motives and facts concerning the purchase of the Steamship "Dacia" by E. N. Breitung. 1915. 19 p. 8°. Senate Doc. 979. *Senate*.

Steamship Lines in Australia. Proposed government-owned steamship lines in Australia. Report of debate in Senate of the Commonwealth Parliament, Nov., 1912. 1915. 16 p. 8°. Senate Doc. 968. *Senate*.

Summary of State Laws Relating to the Dependent Classes, 1913. 1914. 345 p. 8°. *Department of Commerce, Bureau of the Census*.

Tariff (bibliography). List of United States public documents sold by the Superintendent of Documents, Washington, D. C. February, 1915. Price list 37—5th edition. 1915. [35] p. 8°. *Superintendent of Documents*.

Transfer of Flag. Extracts from the Proceedings of the International Naval Conference, London, 1908, and of the Institute of International Law, 1882 and 1913. (Translated by the Legislative Reference Bureau, Library of Congress.) Printed for use of the committee on foreign relations. 1915. 23 p. 8°. *Senate, Committee on Foreign Relations*.

Treaty Between the United States and France. Advancement of Peace. . . . proclaimed, Jan. 23, 1915. 1915. 7 p. 8°. Treaty series, No. 609. *State Department*.

United States Government Official Gazette, The Need of a. By Marcus Borchardt, L.L.M. (member of the District of Columbia bar). 1915. 10 p. 8°. House of Representatives Doc. No. 1626. *House of Representatives*.

Note: This monograph describes briefly the official gazettes of foreign countries and aims to show the character of information on governmental happenings, at present not readily accessible to the reading public, which could properly and profitably be contained in such a publication of the federal government.

United States Relief Commission in Europe, Report on. 1914. 110 p. 8°. *War Dept., Office of Assistant Secretary*.

Water-Borne Commerce of the United States. Letter before the Committee on Commerce, United States Senate. 63d cong., 3d. sess., on H. R. 20189, an act making appropriations for the construction, repair and preservation of certain public works on river and harbors, and for other purposes. 1914. 10 p. 4°. *Senate, Committee on Commerce*.

Note: Contains also tables, prepared by A. H. Weber, secretary of the Board of Engineers for Rivers and Harbors, showing cost of construction and maintenance, the amount of commerce, and cost per ton to the United States of the principal river and harbor improvements.

Water Power Bill. Hearing before the committee on public lands, U. S. Senate . . . on H. R. 16673, an act to provide for the development of water power and the use of public lands in relation thereto, and for other purposes. 1915. 932 p. 8°. *Senate, Committee on Public Lands*.

Water Power, Development of. Report and [minority report] from Senate Committee on Public Lands (to accompany H. R. 16673). (1914.) 13.24 p. 8°. Sen. Report 898, pt. 1 and 2. *Senate, Committee on Public Lands*.

Wealth, Debt, and Taxation, 1913, Abstract of Special Bulletins. 1915. 63 p. 4°. *Department of Commerce, Bureau of the Census*.

ALABAMA

Constitutional Convention. Necessity for new constitution. Message of Emmet O'Neal, Governor, to the Legislature of Alabama, Jan. 15, 1915. 1915. 20 p. 8°. (Legislative Doc. No. 3.)

ARIZONA

Initiative and Referendum Publicity Pamphlet, . . . containing a copy of all proposed amendments to the constitution, proposed by initiative petition, referendum ordered by petition of the people, and measures proposed by initiative petition to be submitted. . . . at the regular general election to be held . . . Nov. 3, 1914. Together with the arguments filed, favoring and opposing certain of said measures. [1914.] 116 p. 8°. *Secretary of State.*

CALIFORNIA

Amendments to Constitution and Proposed Statutes with arguments respecting the same, to be submitted to the electors of the State . . . at the general election . . . Nov. 3, 1914. 1914. 112 p. 8°. *Secretary of State.*

Louisiana Purchase, 1819-1841, A History of the Western Boundary of the. By T. M. Marshall. 1915. 266 p. 8°. Univ. of California publications, Vol. 2. *University of California.*

COLORADO

Constitutional Amendments Submitted to the People of Colorado at the General Election held Nov. 3, 1914. [25] p. fol. *Secretary of State.*

CONNECTICUT

Board of Compensation Commissioners. First annual report. . . for the year ended Sept. 30, 1914. 1914. 32 p. 8°. (Public Doc. No. 58). *Board of Compensation Commissioners.*

Convict Labor Commission Report . . . to the General Assembly, 1915. 1915. 90 p. 8°.

Note: Special commission appointed by act of 1913, general assembly, to inquire into matters relating to the employment of convict labor in the several penal institutions of the State.

DELAWARE

State Manual containing official list of state officers, boards and commissions and county officers for 1915-16, with index. [1915.] 32 p. 8°. *Secretary of State.*

ILLINOIS

Detailed Budget of the Appropriations Requested for the Biennium 1915-1916, filed with the Legislative Reference Bureau. [1914.] 236 p. 4°. *Legislative Reference Bureau*

INDIANA

Legislative Bill Drafting. Bulletin No. 3, Dec., 1914. 36 p. 12°. *Bureau of Legislative Information.*

IOWA

Workmen's Compensation Act, Some Legal Phases of the. 1914. 8 p. 16°. *Industrial Commission.*

Workmen's Compensation Laws. A statement of some conditions which prevailed under the common law system of employer's liability, and a discussion of compensation legislation as a method for improving those conditions and solving the problem of . . . the unfortunate victims of our industrial life, by H. E. Sampson, Assistant Attorney General. 1914. 22 p. 8°. *Attorney General.*

MARYLAND

Constitution . . . with Amendments to and Including 1913, and decisions of the Court of Appeals. (1914.) 78 p. Maryland 8°. *Executive Dept.*

Maryland Manual, 1914-1915. A compendium of legal, historical and statistical information relating to the State of Maryland. [1915.] 275 p. 8°. *Secretary of State.*

MASSACHUSETTS

Constitution of the Commonwealth of Massachusetts. 1915. 71 p. 8°. *Secretary of State.*

MICHIGAN

Constitution of the State of Michigan. 1913. 39 p. 8°. *Secretary of State.*

Legislative Handbook, 1915-1916, . . . 212 p. 24°. *Clerk of the House of Representatives.*

MINNESOTA

Reorganizing the Executive Branch of the State Government in Minnesota, A Plan for. The merit system in civil service. The budget system in appropriation. [1914.] 30 p. fol. *Efficiency and Economy Commission.*

NEBRASKA

Bank Deposit Guaranty in Nebraska; an historical and critical study, by Z. C. Dickinson, 1914. 38 p. 8°. Bulletin No. 6. *Legislative Reference Bureau.*

The Direct Primary in Nebraska, by N. H. Debel. 1914. 112 p. 8°. Bulletin No. 7. *Legislative Reference Bureau.*

NEW YORK

George Junior Republic, Report of the special committee on the, submitted to, and unanimously adopted by, the State Board of Charities at its meeting of Dec. 17, 1913. [1914.] 15 p. 8°.

Workmen's Compensation Insurance, A Method of Determining Pure Premiums for . . . By H. E. Ryan. 1914. 10 p. 8°. *Insurance Department.*

NORTH CAROLINA

Constitution of the State . . . and Copy of the Act of the General Assembly, entitled an act to amend the constitution of the State of North Carolina (ch. 81, Public Laws, extra sess. of 1913.) 1914. 45 p. 8°. *Secretary of State.*

Fire Insurance Investigating Committee. Report . . . 20 p. 8°.

Note: Special committee appointed in virtue of joint resolution of the general assembly, October 13, 1913, to investigate generally the insurance business conducted in the State.

OHIO

- Finances of Municipalities, Report of the Committee for an Investigation of**
 . . . Feb. 3, 1915. 1915. 47 p. 8°. *Legislative Reference Department.*
Legislative Manual . . . 80th General Assembly, 1913-1914. 1914. 316 p.
 8°. *Clerk of Senate, and Clerk of House of Representatives.*

PENNSYLVANIA

- Economy and Efficiency Commission. Report** . . . 1915. 64 p. 8°.

Note: Special commission appointed by act dated July 25, 1913, "to investigate and report on the number, character of duties, and compensation of persons in the employ of the state government "

TENNESSEE

- Index of Legislative Reference Material, compiled** . . . for the special use
 of the members of the 59th General Assembly. 1915. 85 p. 8°. *State Library,
 Legislative Reference Department.*

VIRGINIA

- Tax Revision, Joint Committee on. Report** . . . 1914. 208 p. 8°.

WEST VIRGINIA

- Commonwealth of Virginia vs. State of West Virginia** . . . (In Supreme
 Court of the United States, Oct. term, 1913). Supplemental answer of West Vir-
 ginia; Oral argument of John H. Holt, associate counsel for West Virginia, in
 support thereof and in opposition to interest; closing argument on behalf of West
 Virginia made upon these subjects by A. A. Lilly, Attorney General for West Vir-
 ginia, and opinion of U. S. Supreme Court so far rendered in cause. [1914.] 194
 p. 8°. *Attorney General.*

Note: Litigation in re debt contest.

WISCONSIN

- White Slave Traffic and Kindred Subjects, Committee to Investigate the. Re-**
port and recommendations . . . 1914. 246 p. 8°.

Note: Committee created by ch. 329, laws of 1913.

AUSTRALIA

- European War: Instructions Relative to the Internment and Treatment of Alien
 Enemies.** [1914.] 6 p. fol. Doc. No. 30. 1914 (2d sess.). *Parliament.*
Official Year Book of the Commonwealth . . . Containing authoritative
 statistics for the period 1901-1913 . . . No. 7. 1914. Melbourne, 915.
 1098 p. 8°. *Minister of State for Home Affairs.*

AUSTRIA-HUNGARY

- Diplomatische Aktenstücke zur Vorgeschichte des Krieges 1914.** Wien, 1915.
 115 p. 4°. *K. U. K. Ministerium des Aussern.*

Note: Original Austrian "red book."

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST 421

Ungarisches Statistisches Jahrbuch. Neue folge. 20. 1912 . . . Amtliche Übersetzung aus dem Ungarischen Originale. Budapest. 1914. 581 p. 4°. Preis 5 Kronen. *König. ung. Statistischen Zentralamt.*

BAHAMAS

Blue Book, 1913-14. Nassau. 1914. [500] p. fol.

BRITISH GUIANA

Blue Book, 1913-14. Georgetown. 1914. [500] p. fol.

BRITISH HONDURAS

Blue Book. Belize. 1914. [400] p. fol.

CANADA

Fifth Census of Canada 1911. Agriculture. Vol. 4. Ottawa, 1914. 428 p. 8°. *Census and Statistics Office.*

Note: English and French text.

War Measures in Great Britain. Legislation, proclamations, orders in council, and acts passed in the fourth session of the twelfth parliament of the Dominion of Canada. [1914.] 34 p. 8°. *Parliament.*

DENMARK

Hof-og Staatskalender, Statshaandbog for Kongeriget Danmark for aaret 1915. Kjøbenhavn. [1914.] 159 p. 4°. Pris, 10 kr.

Statistisk Aarbog. 19^{de} Aargang 1914. Kjøbenhavn. 1914. 224 p. 4°. *Statistiske Department.*

ECUADOR

Circular a las Cancillerias Americanas acerca de la neutralidad del Ecuador. Quito. 1914. 10 p. 8°. *Ministerio de relaciones exteriores.*

GREAT BRITAIN

Abstract of Labour Statistics of the United Kingdom. . . . Seventeenth. 1915. 348 p. 8°. [ed. 7733.] Price 1s. 6d. *Board of Trade, Dept. of Labour Statistics.*

Belgian Refugees in this Country. First report of the departmental committee appointed by the president of the local government board to consider and report on questions arising in connection with the reception and employment of the. 1914. 62 p. fol. [ed. 7750.] Price 6½d. Minutes of evidence (to the above). 224 p. fol. [ed. 7779.] Price 1s. 10d. *Local Government Board.*

Declaration Between the United Kingdom, France, and Russia, engaging not to conclude peace separately during the present European war. Signed at London, September 5, 1914. 1915. 3 p. 8°. Treaty series. 1915. No. 1. [ed. 7737.] Price ¼d. *Minister of Foreign Affairs.*

Government Assistance to Credit and Business. Further papers relating to the measures taken by His Majesty's government for sustaining credit and facili-

tating business (in continuation of Cd. 7633 and H. of C. paper, No. 457, of session 1914.) 1914. [Cd. 7684] Price 1½d. *Treasury*.

National Insurance Act. Report of the Departmental Committee on Sickness benefit claims under the. 1914. 5 vols. fol. [cd. 7687], [7688], [7689], [7690], [7691]. *National Health Insurance Committee*.

Note: [Cd. 7687] contains report of the committee. The remaining volumes contain minutes of evidence taken before the committee.

Prizes Captured during the Present European War. Convention between the United Kingdom and France relating to. Signed at London, Nov. 9, 1914. (Ratifications exchanged Dec. 21, 1914.) 1915. 14 p. 8°. Treaty series. 1915. No. 2. [cd. 7739.] Price 1d. *Foreign Office*.

Report on the Special Work of the Local Government Board Arising out of the War. (Up to the 31st December, 1914.) 1915. 42 p. fol. [cd. 7763.] Price 4½d. *Local Government Board*.

Rupture of Relations with Turkey, and Reply Thereto. Despatch from His Majesty's Ambassador at Constantinople summarizing events leading up to. [In continuation of Miscellaneous, No. 13. (1914.) cd 7628.] 1914. 7 p. fol. [cd. 7716.] Price 1½d. *Foreign Office*.

Statistical Abstract for the Several British Self Governing Dominions, Colonies, Possessions, and Protectorates . . . from 1899-1913. Fifty-first number. 1915. 482 p. 8°. [cd. 7786.] Price 2s. *Board of Trade*.

Statistical Abstract Relating to British India from 1903-04, 1912-13. Forty-eighth number. 1915. 285 p. 8°. [cd. 7799.] Price 1s. 3d. *India Office*.

Support Offered by the Princes and Peoples of India to His Majesty in connection with the War. Papers relating to the. 1914. 16 p. fol. [cd. 7624.] Price 2d.

Temperance Measures Adopted in Russia since the Outbreak of the European War. Despatch from His Majesty's Ambassador of Petrograd enclosing a memorandum on the subject of the. 1915. 4 p. fol. [cd. 7738.] Miscellaneous. No. 2. (1915). Price ½d.

Treatment of German Prisoners of War and Interned Civilians in the United Kingdom, correspondence between H. M.'s government and the United States Ambassador respecting the. 1915. 4 p. 8°. [cd. 7815.] Price 1d. *Foreign Office*.

An Employment Insurance. Decisions given by the umpire respecting claims to benefit. Vol. 1, Nos. 1-500. (Given up to 19th March, 1914.) (Together with index.) 1914. 328 p. 8°. Price 1s. 3d. *Board of Trade*.

ITALY

Conflitto Europeo, Gli avvenimenti navali nel. (Dal 21 ottobre al 30 novembre.) (by R. Mazzinghi.) Roma, "Rivista marittima," 1914. 130 p. 8°. Supplement to Rivista marittima, anno XLVII, no. xii. *Ministero della Marina*.

QUEBEC

Annuaire Statistique. 1 ère Année. [1914.] 1914. 454 p. 4°. *Bureau des statistiques*.

STRAITS SETTLEMENTS

Blue Book, 1913. Singapore. 1914. [600] p. fol.

SWITZERLAND

Statistisches Jahrbuch der Schweiz . . . 22 Jahrgang, 1913. Bern 1914. 369 p. 8°. *Statistischen bureau des eidg. Departements des Innern.*

VENEZUELA

El libro amarillo presentado al congreso de plenipotenciarios de los Estados Unidos de Venezuela por el ministro de relaciones exteriores en 1914. Caracas. 1914. 801 p. 4°. *Ministerio de relaciones exteriores.*

INTERNATIONAL

Traité Général d'arbitrage communiqué au Bureau International de la Cour permanente d'Arbitrage. Deuxième Série. La Haye. 1914. 98 p. fol. *Bureau International de la Cour Permanente Arbitrage.*

INDEX TO RECENT LITERATURE BOOKS AND PERIODICALS

COLONIES

Books

Barrows, D. P. A decade of American government in the Philippines, 1903-1913. Yonkers, N. Y.: World Book Co.

Harris, N. D. Intervention and colonisation in Africa. Boston: Houghton, Mifflin. 1915.

Kirkpatrick, F. A. Imperial defence and trade. London: Royal Colonial Inst. 1915. Pp. 107.

Milner, Viscount. England in Egypt. 12th ed. London: E. Arnold. 1915. Pp. 438.

Moses, B. Spanish dependencies in South America. New York: Harper.

Zimmermann, Alfred. Geschichte der deutschen Kolonialpolitik. Berlin: Ernst Siegfried u. Sohn. 1914. Pp. 336.

Articles in Periodicals

India. The new Indian councils. *Payson J. Treat.* Jour. of Race Dev. Jan., 1915.

India. The social and racial unrest in India. *John P. Jones.* Jour. of Race Dev. Jan., 1915.

Korea. Environment and Korea. *Lynde Selden.* Jour. of Race Dev. Jan., 1915.

Philippines. Recent progress in the Philippines. *Manuel L. Quezon.* Jour. of Race Dev. Jan., 1915.

CONSTITUTIONAL LAW

Books

Brissaud, J. A history of French public law. Boston: Little, Brown. 1915.

Chiera, Edw. Legal and administrative documents from Nippur. Philadelphia: Pa. Univ. Museum.

Hemenway, H. B. Legal principles of public health administration. Introd. by *J. H. Wigmore.* Chicago: T. H. Flood & Co. 1915.

Jones, E. Anthracite coal combination in the United States. Cambridge: Harvard Univ. Press. 1915.

Lefevre, A. The organization and administration of a state's institutions of higher education. Austin, Texas: Von Boeckmann-Jones Co.

Reed, T. H. Government for the people. New York: Huebsch. 1915.

Reeder, R. P. The validity of rate regulations. Philadelphia: Johnson. 1915.

Ridges, E. W. Constitutional law of England. London: Stevens & Sons. 1915. Pp. xxiv, 575.

Voorhees, H. C. The law of arrest. 2d ed. Boston: Little, Brown. 1915.

Articles in Periodicals

Administrative Law. Streitfragen aus dem Beamtenrechte. *R. Piloty.* Archiv d. Öffent. Rechts. XXXIII, 1 u. 2.

Anti-Trust Act. The effect of the federal "anti-trust laws" on commerce in patented and copyrighted articles. *Amos J. Peaslee.* Harv. Law Rev. Feb., 1915.

Appropriations. Appropriations to charitable institutions. *A. Fleisher.* Pol. Sci. Quart. Mar., 1915.

Bohemia. La reconstitution du Royaume de Bohême. *Louis Leger.* Rev. d. Sci. Pol. 15 Fév., 1915.

Business Insurance. The legality of so-called "business insurance." *R. W. Withers.* Yale Law Jour. Apr., 1915.

Canada. Judicial review of legislation in Canada. *Charles G. Haines.* Harv. Law Rev. Apr., 1915.

Citizenship. Vergleichende Betrachtung der Staatsangehörigkeitsgesetze vom 1. Juli 1870 und vom 22. Juli 1913. *Alex. Lifschütz.* Archiv d. Öffent. Rechts. XXXIII, 1 u. 2.

Comity. Comity in the federal courts. *Arthur March Brown.* Harv. Law Rev. Apr., 1915.

Constitutional Decisions. Five to four constitutional law decisions. *Albert H. Putney.* Yale Law Rev. Apr., 1915.

Court Martial. Trial by court-martial. *Hugh H. L. Bellot.* Law Mag. and Rev. Feb., 1915.

Crown. The crown and private rights. *W. W. Lucas.* Jurid. Rev. Feb., 1915.

Divorce. *Ex parte* divorce. *Robert James Peaslee.* Harv. Law Rev. Mar., 1915.

Due Process. Due process of law. Persistent and harmful influence of *Murray v. Hoboken Land and Improvement Company.* *Hannis Taylor.* Yale Law Jour. Mar., 1915.

German Legislation. Einige Bemerkungen zum Reichsgesetzgebungsverfahren. *Walther Rauschenberger.* Archiv d. Öffent. Rechts. XXXIII, 1 u. 2.

Germany. Das Deutsche Reich als Bundesstaat. *Josef Hausmann.* Archiv d. Öffent. Rechts. XXXIII, 1 u. 2.

Jury. Das englische-Schwurgericht. *Erich Warschauer.* Archiv d. Öffent. Rechts. XXXIII, 1 u. 2.

Martial Law. Martial law in England. Can. Quart. Rev. Feb., 1915.

Martial Law. Unconstitutional claims of military authority. *Henry Winthrop Ballantine.* Jour. of Crim. Law and Crim. Jan., 1915.

Naturalization. Some changes in the law of naturalization. *W. E. Wilkinson.* Law Mag. and Rev. Feb., 1915.

Public Relief Funds. The administration of public relief funds. *F. G. D'Aeth.* Polit. Quart. Dec., 1914.

Right to Bear Arms. The constitutional right to keep and bear arms. *L. A. Emery.* Harv. Law Rev. Mar., 1915.

Rule Committee. The rule committee and its work. *Frank Newbolt and Samuel Rosenbaum.* Law Mag. and Rev. Feb., 1915.

Sub-Committees. Sub-committees of Congress. *Burton L. French.* Am. Pol. Sci. Rev. Feb., 1915.

Supreme Court. Decisions of the Supreme Court of the United States on constitutional questions, 1911-1914. *Emlin McClain.* Am. Pol. Sci. Rev. Feb., 1915.

Supreme Court. The Supreme Court a coördinate branch of the United States government. *Everett P. Wheeler.* Yale Law Jour. Feb., 1915.

Trade Commission. The federal trade commission: The development of the law which led to its establishment. *James A. Fayne.* Am. Pol. Sci. Rev. Feb., 1915.

Trusts. The trust problem in the light of some recent decisions. *Herbert J. Friedman.* Yale Law Jour. Apr., 1915.

INTERNATIONAL LAW AND DIPLOMACY

Books

Adkins, F. J. Historical backgrounds of the great war. New York: McBryde, Nast. 1915.

Alderson, A. W. Why the war cannot be final. London: King & Son. 1915.

Allen, J. W. Germany and Europe. New York: Macmillan. 1915.

Ames, F. T. Between the lines in Belgium. New York: Dodd, Mead. 1915.

Baer, E. H. Der Völkerring. Eine Chronik der Ereignisse seit dem 1. July, 1914. Erste Band. Stuttgart: Johns Hoffman. 1914. Pp. 328.

Ballard, Frank. Plain truths versus German lies. London: C. H. Kelly. 1915. Pp. 146.

Barclay, Sir Thomas. Law and usage of war. Boston: Houghton Mifflin. 1915.

Barron, C. W. The audacious war. Boston: Houghton Mifflin.

Baty, T., and Morgan, J. H. War: Its conduct and legal results. London: J. Murray. 1915. Pp. 606.

Bellet, D. Origines de la Guerre de 1914. Paris: Plon.

Bernhardi, F. von. Germany and England. New York: Dillingham. 1915.

Boas, Franz. Kultur u. Rasse. Leipzig: Veit & Comp. 1914. Pp. 256.

Bowley, A. L. The effect of the war on the external trade of the United Kingdom. Cambridge: Univ. Press. 1915. Pp. 64.

Buchan, John. Nelson's history of the war. Vol. 2. London: Nelson. 1915. Pp. 242.

Buchner, Eberhard. Kriegsdokumente. Der Weltkrieg 1914 in der Darstellung der zeitgenössischen Presse. Erste Band: Die Vorgeschichte der Krieg bis zur Vogesenschlacht. München: Albert Langen. 1914. Pp. 362.

Carter, W. H. The American army. Indianapolis: Bobbs-Merrill. 1915.

- Condé, M. de.* Sur l'impossibilité de supprimer la guerre, demain comme aujourd'hui. Paris: Libr. Littéraire. 1914. Pp. 304.
- Cook, Theodore Andrea.* Kaiser, Krupp, and Kultur. London: J. Murray. 1915. Pp. 190.
- Cramb, J. A.* Origins and destiny of Imperial Britain. New York: Dutton.
- Dawson, W. H.* What is wrong with Germany? New York: Longmans, Green. 1915.
- Denis, E. D., et E.* Qui a voulu la guerre? Paris: Armand Colin.
- Devaux, J.* La télégraphie sans fil dans les rapports internationaux. Paris: Pedone. 1914. Pp. viii, 222.
- Ex-Intelligence Officer.* The German spy system from within. New York: Doran.
- Ex-Royal Navy.* The British navy. New York: Doran.
- Fitzpatrick, Sir Percy.* The origin, causes and objects of the war. London: Simpkin. 1915. Pp. 124.
- Gauss, C.* The German Emperor. New York: Scribner. 1915.
- German Emperor and others.* Germany's war mania. New York: Dodd, Mead. 1915.
- German legislation for the occupied territories of Belgium.* Official texts. The Hague: Martinus Nijhoff. 1915. Pp. 108.
- Graham, S.* Russia and the world. New York: Macmillan. 1915.
- Greene, F. V.* The present military situation in the United States. New York: Scribner.
- Harrison, A.* The Kaiser's war. Introd. by *F. Harrison*. London: G. Allen & Unwin. 1915.
- Hayward, Charles W.* War and rational politics. London: Watts. 1915.
- Henderson, Fred.* The new faith. A study of party politics and the war. London: Jarrold. 1915. Pp. 114.
- Hurgronje, C. S.* The holy war "made in Germany." New York: Putnam. 1915.
- Hutchinson, Lincoln.* The Panama canal and international trade competition. New York: Macmillan.
- Jaffé, Edgar* (Ed). Krieg u. Wirtschaft. Kriegshefte des Archivs für Sozialwissenschaft u. Socialpolitik Heft. 1. Tübingen: J. C. B. Mohr. 1914. Pp. 266.
- Jane, L. C.* The nations at war. New York: Dutton. 1915.
- Kühnemann, Eugen.* Vom Weltreich des deutschen Geistes. Reden u. Aufsätze. München: Beckache Verlagsbuch. 1914. Pp. 450.
- Ludwig, E.* Austria-Hungary and the war. New York: Ogilvie. 1915.
- Muirhead, J. H.* German philosophy in relation to the war. London: J. Murray. 1915. Pp. 122.
- Müller, Dr.* Weltkrieg und Völkerrecht. Berlin: George Reimer. 1915.
- Murray, H. Robertson.* Krupp's and the international armaments ring. London: Holden & H. 1915. Pp. 192.
- Neeser, Robert W.* Our navy and the next war. New York: Scribner. 1915.
- Plenge, J.* Der Krieg und die Volkswirtschaft. Münster, Germany: Borgmeyer & Co.
- Putnam, R.* Alsace and Lorraine. New York: Putnam. 1915.

- Queux, Wm. Le.* German spies in England. An exposure. London: S. Paul. 1915. Pp. 224.
- Rankin, R.* The inner history of the Balkan war. New York: Dutton. 1915.
- Rohrbach, P.* German world policies. New York: Macmillan.
- Roosevelt, T.* America and the world war. New York: Scribner. 1915.
- Rose, J. H.* The origins of the war. New York: Putnam. 1915.
- Ruedorffer, J. J.* Grundzüge der Weltpolitik in der Gegenwart. Stuttgart u. Berlin: Deutsche Verlags-Anstalt. 1914. Pp. 252.
- San Severino, B. Q.* Italy's foreign and colonial policy. New York: Dutton. 1915.
- Sarolea, C.* How Belgium saved Europe. Philadelphia: Lippincott.
- Seton-Watson, R. W., and others.* The war and democracy. New York: Macmillan. 1915.
- Singh, N.* India's fighters. London: S. Low, Marston & Co. 1915.
- Thompson, N.* Colombia and the United States. London: N. Thompson & Co.
- Thompson, Robert J.* England and Germany in the war. Boston: Chapple Pub. Co. 1915.
- Usher, R. G.* Pan-Americanism. New York: Century. 1915.
- Villard, O. G.* Germany embattled. New York: Scribner. 1915.
- Weiss, A.* La violation de la neutralité belge et luxembourgeoise par l'Allemagne. Paris: Armand Colin.
- Wilson, Philip Whitwell.* The unmaking of Europe: The first phase of the Hohenzollern war. London: Nisbet. 1915. Pp. 344.
- Withers, H.* War and Lombard street. New York: Dutton. 1915.
- Young, E. Hilton.* The system of national finance. London: Smith, Elder. 1915. Pp. 374.

Articles in Periodicals

- Alsace-Lorraine.** La réunion de l'Alsace-Lorraine. *Paul-Albert Helmer.* Rev. Pol. et Par. 10 Jan., 1915.
- America.** America and the war. *Dugald Macfadyen.* Contemp. Rev. Mar., 1915.
- Angell.** The political theory of Mr. Norman Angell. *A. D. Lindsay.* Polit. Quart. Dec., 1914.
- Arbitration.** Die Schiedsgerichtsverträge Frankreichs mit der Türkei, Venezuela und Haiti. *Karl Strupp.* Zeits. f. Völkerr. VIII, 4, 5.
- Asser.** T. M. C. Asser in memoriam (1838-1913). *D. Josephus Jitta.* Zeits. f. Völker. VIII, 4, 5.
- Bar.** Ludwig von Bars Lebenswerk. *Charles de Boeck.* Zeits. f. Völkerr. VIII, 4, 5.
- Belgium.** The neutrality of Belgium. *Th. Baty.* Quart. Rev. Jan., 1915.
- Bulgaria.** Bulgaria's rôle in the Balkans. *Radoslav A. Tsanoff.* Jour. of Race Dev. Jan., 1915.
- China.** China and the war. *Francis Piggott.* Nine. Cent. Mar., 1915.
- Constantinople.** The future of Constantinople. *J. Ellis Barker.* Nine. Cent. Mar., 1915.

Consular and Diplomatic Service. Training in universities for consular and diplomatic service. *C. A. Duniway*. *Am. Jour. of Int. Law*. Jan., 1915.

Contraband. Contraband of War. *Atherley Jones*. *Law Mag. and Rev.* Feb., 1915.

Contraband. The vexed question of contraband. *Arthur Willert*. *Atlan.* Mon. Feb., 1915.

Contributions. Contributions and requisitions in war. *Charles Noble Gregory*. *Col. Law Rev.* Mar., 1915.

Federal Unions. The influence of federal unions on the peace of the world. *Raleigh C. Minor*. *Va. Law Rev.* Feb., 1915.

Germany. Germany and Eastern Europe. *Lewis B. Namier*. *Polit. Quart.* Dec., 1914.

International Force. The organisation of international force. *Arthur W. Spencer*. *Am. Jour. of Int. Law*. Jan., 1915.

International Law. Zur Konstruktion des Völkerrechts. *Alfred von Verdross*. *Zeits. f. Völkerr.* VIII, 4, 5.

International Organization. Law and organization. *John Bassett Moore*. *Am. Pol. Sci. Rev.* Feb., 1915.

Italy. Italy's duty. *Guglielmo Ferrero*. *Atlan. Mon.* Apr., 1915.

Italy. Italy's foreign and colonial policy. *Richard Bagot*. *Fort. Rev.* Feb., 1915.

Luxemburg and Belgium. The international status of the Grand Duchy of Luxemburg and the Kingdom of Belgium in relation to the present European war. *Theodore P. Ion*. *Mich. Law Rev.* Mar., 1915.

Maritime Law. Der Widerstand feindlicher Handelsschiffe gegen die Aufbringung. *Heinrich Triepel*. *Zeits. f. Völkerr.* VIII, 4, 5.

Mediation. The A. B. C. mediation. *James L. Slayden*. *Am. Jour. of Int. Law*. Jan., 1915.

Military Strategy. Military strategy *versus* diplomacy. *Munroe Smith*. *Pol. Sci. Quart.* Mar., 1915.

Monroe Doctrine. South America and the Monroe doctrine. *W. S. Robertson*. *Pol. Sci. Quart.* Mar., 1915.

Nationality. Europe and the problem of nationality. *W. Alison Phillips*. *Edinb. Rev.*, Jan., 1915.

Nationality. Nationality and the new Europe. *A. C. Coolidge*. *Yale Rev.* Apr., 1915.

Nations. Big states and small nations. *J. A. R. Marriott*. *Fort. Rev.* Mar., 1915.

Naturalization. Nationality and naturalization. *A. A. Baumann*. *Fort. Rev.* Mar., 1915.

Neutrality. Legal neutrality *versus* moral neutrality. *Paul Fuller*. *Atlan. Mon.* Feb., 1915.

Naturalization. Naturalization in theory and in practice. *George G. Wilson*. *Yale Rev.* Apr., 1915.

Neutrals. Neutral rights and duties. *C. T. Revere*. *N. Am. Rev.* Feb., 1915.

Neutrals. Silent neutrals. *John Macdonell*. *Contemp. Rev.* Jan., 1915.

Peace. American peace dreams. *Lewis Einstein*. *Nat. Rev.* Feb., 1915.

Peace. Social organization and peace. *A. A. Tenney*. *Pol. Sci. Quart.* Mar., 1915.

Peace. The United States and the peace treaty. *O. G. Villard*, *N. Am. Rev.* Mar., 1915.

Peace. What the nature of the peace will be. *Yves Guyot*. *N. Am. Rev.* Feb., 1915.

Pecuniary Claims. Private pecuniary claims arising out of war. *Edwin M. Borchard*. *Am. Jour. of Int. Law.* Jan., 1915.

Powers. Staaten als Mächte und Mächte als Staaten. *Robert Piloty*. *Zeits. f. Völkerr.* VIII, 4, 5.

Russian Imperialism. Romantisme et Réalisme dans l'Impérialisme Russe. *Michel Pavlovitch*. *Rev. Pol. Int.* Sept.-Oct., 1914.

Sudan. The administration of the Sudan. *P. F. Martin*. *Quart. Rev.* Jan., 1915.

Turkey. Turkey in Europe and Asia. *Polit. Quart.* Dec., 1914.

Turkey. Turkey, Germany, and the war. *Edwin Pears*. *Contemp. Rev.* Mar., 1915.

War. The causes of the great war. *Edward Raymond Turner*. *Am. Pol. Sci. Rev.* Feb., 1915.

War. The church and the war. *The Bishop of Lincoln*. *Polit. Quart.* Dec., 1914.

War. The dominions and the settlement: A plea for conference. *Round Table*. Mar., 1915.

War. Le Droit des Gens et la Guerre de 1914. *William Loubat*. *Rev. Pol. et Par.* 10 Fév., 1915.

War. Les Effets de la Guerre sur le budget de la Suisse et sur la situation financière des Chemins de fer fédéraux. *Marcel Peschaud*. *Rev. Pol. et Par.* 10 Fév., 1915.

War. Des évaluations du coût de la guerre. *Eugene D'Eichthal*. *Rev. d. Sci. Pol.* 15 Fév., 1915.

War. Germany's terms. *Hans Delbrück*. *Atlan. Mon.* Apr., 1915.

War. La guerre et la marine marchande française. *Paul de Rousiers*. *Rev. d. Sci. Pol.* 15 Fév., 1915.

War. La Guerre et le Nombre. *René Millet*. *Rev. Pol. et Par.* 10 Fév., 1915.

War. International law as applied by England in the war. I. *Norman Bentwich*. *Am. Jour. of Int. Law.* Jan., 1915.

War. Our foreign policy and the war. *David Lawrence*. *N. Am. Rev.* Apr., 1915.

War. The politics of war. *Round Table*. Mar., 1915.

War. La Réparation des Dommages causés par la Guerre. *R. Mauduit*. *Rev. Pol. et Par.* 10 Fév., 1915.

War. The schism of Europe. *Round Table*. Mar., 1915.

War. Some legal consequences of the European war. *George W. Wickersham*. *Yale Law Jour.* Mar., 1915.

War. Some questions of international law in the European war. *James W. Garner*. *Am. Jour. of Int. Law.* Jan., 1915.

War. Trading with the enemy. *G. G. Phillimore*. *Jour. of Soc. of Comp. Legis.* Jan., 1915.

- War. The United States and the war. *Sydney Brooks*. N. Am. Rev. Feb., 1915.
- War. War and the law of nations in the twentieth century. *Louis Renault* Am. Jour. of Int. Law. Jan., 1915.
- War. War and social democracy. *W. H. Mallock*. Fort. Rev. Feb., 1915.

JURISPRUDENCE

Books

- Alverstone, Rt. Hon. Viscount*. Recollections of bar and bench. New York: Longmans, Green. 1915.
- Beale, J. H.* Bartolus on the conflict of laws. Cambridge: Harvard Univ. Press. 1915.
- Black, H. C.* A treatise on the law of income taxation. 2d ed. Kansas City, Mo.: Vernon Law Book Co. 1915.
- Cahalane, C. F.* Police practice and procedure. New York: Dutton. 1915.
- Johns, C. H. W.* Relations between the laws of Babylonia and the laws of the Hebrew peoples. New York: Oxford Univ. Press. 1915.
- Parry, E. A.* The law and the poor. New York: Dutton. 1915.
- Rappard, W. E.* La Révolution industrielle et les Origines de la Protection Légale du travail en Suisse. Berne: Staempfli & Co. 1915.
- Redlich, J.* The common law and the case method in American university law schools. Washington: Carnegie Foundation. 1915.

Articles in Periodicals

- Case Law. The qualities of current judicial decisions. *John H. Wigmore*. Ill. Law Rev. Mar., 1915.
- Christianity. Christianity and law. *Ernest G. Stevens*. Am. Law. Rev. Jan.-Feb., 1915.
- Civil Procedure. Studies in English civil procedure. 2. The rule-making authority. *Samuel Rosenbaum*. Pa. Law. Rev. Apr., 1915.
- Contempt. Procedure in contempt cases. *E. Leland Taylor*. Va. Law Rev. Jan., 1915.
- Crime. The laboratory in the study and treatment of crime. *V. V. Anderson*. Jour. of Crim. Law and Crim. Mar., 1915.
- Crimes. Classification and definition of crimes. *Ernst Freund*. Jour. of Crim. Law and Crim. Mar., 1915.
- Criminal Procedure. Necessity for a revision of our criminal procedure. *Eugene Lankford*. Jour. of Crim. Law and Crim. Mar., 1915.
- Criminal Procedure. A proposed draft of a code of criminal procedure. *William E. Mikell*. Jour. of Crim. Law and Crim. Mar., 1915.
- Custom and Law. The growth of custom into law. *L. Dee Mallonee*. Am. Law. Rev. Mar.-Apr., 1915.
- Equity. The early history of equity. *W. S. Holdsworth*. Mich. Law Rev. Feb., 1915.
- Equity. The powers of courts of equity. III. *Walter Wheeler Cook*. Col. Law Rev. Mar., 1915.

Expert Testimony. A bill to regulate expert testimony. *Edwin R. Keedy.* Jour. of Crim. Law and Crim. Jan., 1915.

Judicial Administration. Inefficiency in the administration of justice. *Am. Law Rev.* Mar.-Apr., 1915.

Judicial Tenure. Election of judges or selection? *Samuel Rosenbaum.* Ill. Law Rev. Feb., 1915.

Jury. Government by jury. *L. A. Emery.* Yale Law Rev. Feb., 1915.

Jury. The inefficiency of the American jury. *Edson R. Sunderland.* Mich. Law Rev. Feb., 1915.

Jury. Some needed reforms in the methods of selecting juries. *Willis B. Perkins.* Mich. Law Rev. Mar., 1915.

Justice. The new legal justice. *Oscar Ross Ewing.* Yale Law Jour. Apr., 1915.

Land Registration. Pivotal points in the Torrens system. *William C. Niblack.* Yale Law Jour. Feb., 1915.

Legal Education. Legal education and admission to the bar in the southern States. *W. M. Lile.* Va. Law Rev. Kan., 1915.

Legal Ethics. Ethics of the legal profession. *Orrin N. Carter.* Ill. Law Rev. Jan.-Feb., 1915.

Personality. Interests of personality. *Roscoe Pound.* Harv. Law Rev. Feb. and Mar., 1915.

Probation. Probation—a practical help to the delinquent. *James A. Collins.* Nat. Munic. Rev. Apr., 1915.

Public Defender. The necessity for a public defender. *Mayer C. Goldman.* Jour. of Crim. Law and Crim. Jan., 1915.

Roman Law. American recognition of the Roman or civil law. *Ira E. Robinson.* Ill. Law Rev. Jan., 1915.

MISCELLANEOUS

Books

American Year Book. 1914. New York: Appleton.

Bakenhuis, R. E., Knapp, H. S., and Johnson, E. R. The Panama canal. New York: J. Wiley & Sons. 1915.

Barker, Ernest. Political thought in England from Herbert Spencer to the present day. London: Williams & N. 1915. Pp. 256.

Barker, J. Ellis. Modern Germany: Her political and economic problems, etc. 5th and very greatly enlarged ed. London: Smith, Elder. 1915. Pp. 864.

Bishop, J. The Panama gateway. New and rev. ed. New York: Scribner. 1915.

Carnegie, W. H. Democracy and Christian doctrine. New York: Macmillan. 1915.

Coker, F. W. Readings in political philosophy. New York: Macmillan. 1915.

Colson, C. Railway rates and traffic. London: Bell. 1915.

Convict No. 6000. The truth about the state penitentiary at McAlester. Boston: Christopher Pub. Co. 1915.

- Cook, S. A.* The essence and the ethics of politics. New York: Abingdon Press. 1915.
- Davis, H. W. C.* The political thought of Heinrich von Treitschke. New York: Scribner. 1915.
- DeWitt, B. P.* The progressive movement. New York: Macmillan. 1915.
- Dunning, W. A.* Studies in southern history and politics. New York: Col. Univ. Press. 1915.
- Fosdick, R. B.* European police systems. New York: Century.
- Hammond, Basil Edward.* Bodies politic and their governments. Cambridge: Univ. Press. 1915. Pp. 570.
- Hecker, E. A.* A short history of women's rights. 2d ed. New York: Putnam. 1915.
- Hichborn, F.* The system. San Francisco: J. H. Barry Co. 1915.
- Holt, L. H.* An introduction to the study of government. New York: Macmillan. 1915.
- Kidd, B.* Social evolution. New ed. rev. New York: Macmillan.
- Mackay, B. L. Freiherr v.* China: Die Republik der Mitte. Berlin: Cotta'schen Buchhandlung. 1914. Pp. 264.
- Melvin, F. J.* Socialism and the sociological idea. New York: Sturgis & Walton. 1915.
- Moorehead, W. K.* The American Indian in the United States. Andover, Mass.: Andover Press.
- Reed, S. M.* Church and state in Massachusetts. 1691-1740. Urbana, Ill.: Univ. of Ill. 1915.
- Ripley, W. Z.* Railroads. New York: Longmans, Green.
- Shaw, S.* The Kaiser. 1859-1914. New York: Macmillan.
- Shepherd, H. B.* Jesus and politics. New York: Dutton.
- Somarr, Dr. Felix.* Bankpolitik. Tübingen: Paul Siebeck.
- Sorel, G.* Reflections on violence. New York: Huebsch. 1915.
- Treitschke, H. von.* The confessions and life of Frederick the Great. New York: Putnam. 1915.
- Treitschke, H. von.* Germany, France, Russia, and Islam. New York: Putnam. 1915.
- Walsh, C. M.* The political science of John Adams. New York: Putnam.
- Williams, J. F.* Proportional representation and British politics. New York: Duffield.

Articles in Periodicals

- Convict Labor.** Employment and compensation of prisoners. *E. M. Abbott.* Jour. of Crim. Law and Crim. Mar., 1915.
- Convict Labor.** Labor unionism and convict labor. *E. T. Hiller.* Jour. of Crim. Law and Crim. Mar., 1915.
- Corporations.** The taxation of corporations. *Oscar L. Pond.* Yale Law Jour. Mar., 1915.
- Crime.** Crime and disease. *Victor C. Vaughan.* Jour. of Crim. Law and Crim. Jan., 1915.
- Crime.** Criminal statistics. *John Koren.* Jour. of Crim. Law and Crim. Jan., 1915.

Democracy. The essence of democracy. *Wilhelm Hasbach*. *Am. Pol. Sci. Rev.* Feb., 1915.

France. L'Ame de la France. *A. Darlu*. *Rev. Pol. et Par.* 10 Jan., 1915.

German and French Thought. La pensée Allemande et la pensée Française. *Emile Boutroux*. *Rev. Pol. Int.* Sept.-Oct. 1914.

Government Ownership. Some political phases of government ownership. *Samuel O'Dunn*. *Atlan. Mon.* Feb., 1915.

Liberty. Liberty and license. *H. M. Aubrey*. *Forum.* Apr., 1915.

Mental Defectives. The mental examination of reformatory cases. *F. Kuhlmann*. *Jour. of Crim. Law and Crim.* Jan., 1915.

Nietzsche. Nietzsche and the "culture-state." Round Table. Mar., 1915.

Public Opinion. The organization of public opinion. *Arthur T. Hadley*. *N. Am. Rev.* Feb., 1915.

Public Services. Returns on public service properties. *John Bauer*. *Pol. Sci. Quart.* Mar., 1915.

Race Betterment. Race betterment and the crime doctors. *F. Emory Lyon*. *Jour. of Crim. Law and Crim.* Mar., 1915.

Race Prejudice. The psychology of American race prejudice. *George W. Ellis*. *Jour. of Race Dev.* Jan., 1915.

Races. The concordia of races. *Jinzo Naruse*. *Jour. of Race Dev.* Jan., 1915.

Railways. A plan for the nationalization of railroads. *W. W. Cook*. *Yale Law Jour.* Mar., 1915.

Registration. National registration of births and deaths. *Henry B. Hemenway*. *Ill. Law Rev.* Jan., 1915.

Slavs. The Slav peoples. *Polit. Quart.* Dec., 1914.

Valuation of Utilities. Decisions of regulating commissions: Valuation of franchises required. *William D. Kerr*. *Ill. Law Rev.* Feb., 1915.

Woman's Work. Women in office. *Jane Campbell*. *Nat. Munic. Rev.* Apr., 1915.

Women Offenders. The results of mental and physical examination of four hundred women offenders—with particular reference to their treatment during commitment. *Edith R. Spaulding*. *Jour. of Crim. Law and Crim.* Jan., 1915.

MUNICIPAL GOVERNMENT

Books

Beard, Mary Ritter. Woman's work in municipalities. New York: Appleton. 1915.

Bennett, H. C. American women in civic work. New York: Dodd, Mead. 1915.

Cadbury, George. Town planning. New York: Longmans, Green.

Eldridge, S. Problems of community life. New York: Crowell.

Hove, F. C. The modern city and its problems. New York: Scribner. 1915.

King, C. L. Lower living costs in cities. New York: Appleton. 1915.

Public policies as to municipal utilities. Philadelphia: Am. Acad. of Pol. & Soc. Sci. 1915.

Articles in Periodicals

Children. Children in the cities. *Florence Kelley.* Nat. Munic. Rev. Apr., 1915.

City Housekeeper. The city's housekeeper. *Hugh Molleson Foster.* Nat. Munic. Rev. Apr., 1915.

City Trees. The movement for city street trees—a survey. *Carl Bannwart.* Nat. Munic. Rev. Apr., 1915.

Glasgow. Studies in municipal government. No. 4. Glasgow. *J. W. Pratt.* Polit. Quart. Dec., 1914.

Municipal Bonds. Municipal bonds as popular investments. *Howard F. Beebe.* Nat. Munic. Rev. Apr., 1915.

Municipal Revenues. Municipal revenues in Ohio. *S. Gale Lowrie.* Nat. Munic. Rev. Apr., 1915.

Noise Nuisance. Public health versus the noise nuisance. *Imogene B. Oakley.* Nat. Munic. Rev. Apr., 1915.

Woman's Work. Woman's work for the city. *Mary Ritter Beard.* Nat. Munic. Rev. Apr., 1915.

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EDUCATION FOR THE BAR IN THE UNITED STATES

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There is no country in which it is as important that the lawyers should be well educated for their profession, as it is in the United States. Here they hold a political position. They are a recognized part of the machinery of government. All are officers of courts that have the acknowledged power of interpreting constitutions and statutes, which may be invoked as grounds of action or defence in pending litigation, and of holding statutes inconsistent with a constitution so interpreted to be void. Other nations may confer on the judiciary a similar authority in terms, but nowhere else is the exertion of such authority common and accepted by all as conclusive. In the last resort, questions of constitutional law and statutory construction will be decided in a court, manned exclusively by those who have been trained for the bar, after hearing argument from lawyers who have been educated in the same manner.

The constitution of the American Bar Association has a standing committee on "Legal education and admission to the bar." Their reports, from time to time, have been influential in securing action which, since the foundation of the association in 1878, has served to lengthen the general term of study required for the admission to the bar, to broaden the field of study, and to trans-

fer the general place of study from a lawyer's office to a law school.

In February, 1913, this committee unanimously addressed an important request to the Carnegie Foundation for the Advancement of Teaching. It was for a "searching and far-reaching" investigation of the conditions under which the work of legal education is carried on in this country, and a "frank and fearless" statement of "the facts which the investigation may reveal." The sending of this request was reported by the committee to the association at its next meeting, in 1913, but not in season to allow it, under the rules, to be the subject of any action at that time.¹

The Foundation undertook to do what the committee asked, and entered on the work early in 1913. Its purpose is to make an examination of all the law schools of the United States, their various curriculums of study, their libraries, and their general facilities for teaching; to consider the relation of the legal profession to the administration of the law and to the obligations of modern society; to trace the evolution of the profession, its relation to legislation and administration, and that of the number of lawyers to the amount of litigation; and to investigate the cost of the legal process.²

In December, 1914, the Foundation published a preliminary paper, entitled "The common law and the case method in American university law schools." This constitutes "Bulletin No. 8" of its publications, and a copy will be sent to any one who requests it. The presentation of the final report is not expected before the summer of 1916.

To quote from the preface of this bulletin (p. vi), "it seemed clear to the officers of the Carnegie Foundation that it would be difficult to obtain from any teacher of law or any practitioner of law in America a thoroughly sound, fair-minded, and scholarly report" on the question of the case method of instruction.

They therefore determined to employ a foreigner for this work, selecting Dr. Josef Redlich, professor of law in the University of

¹See the reference to the subject in the *Reports of the American Bar Association*, xxxix, 18.

²*Reports of the American Bar Association*, xxxviii, 476.

Vienna, who has published two volumes on certain forms of government in England. He had made an extended visit to this country in 1910. Two months more he spent here in the fall of 1913, visiting ten of our hundred and fifty law schools, and attending class exercises in each.

Dr. Redlich praises highly the opportunities afforded in the law schools of the United States, where the case method prevails. "The American student," he says, "gains in the modern law school of his country, all the practical knowledge of the law that any school can give to a future attorney or judge, in unparalleled manner."³ But what, to him, is the case method? It is not the case method now practiced in most of our law schools which have adopted that system. It is not a method which excludes special instruction of an introductory character in the elementary principles of American law. To quote his words (p. 41):

"It is characteristic of the case method that where it has thoroughly established itself, legal education has assumed the form of instruction almost exclusively through analysis of separate cases. The result of this is that the students never obtain a general picture of the law as a whole, not even a picture which includes only its main features. This is, in my opinion, however, just as important for the study of Anglo-American law as for the codified continental systems, and is a task which should also be accomplished by the law courses in the universities. To this end, the following seems to me above all things requisite:

"First, as an introduction to the entire curriculum, care should be taken to introduce to the students, in elementary fashion, the fundamental concepts and legal ideas that are common to all divisions of the common law. Or, to express it in a word current in European pedagogy, the beginners in American law schools should be given a legal *Propädeutik*, or preparatory course, which in a simple yet scientific manner shall set forth the elements of the common law; shall furnish, that is to say, a comprehensive view of the permanent underlying concepts, forms, and principles, not forgetting the elementary postulates of law and legal relation-

³ Bulletin No. 8, 40.

ships in general. The more rigorously *casuistic* the case method of instruction, which then follows, necessarily has to be, the more important it seems to me it is to make clear to the students at the very beginning certain fundamental facts and guideposts of the law which are removed from all casuistry and theoretical controversy. Only in this way will their future studies rest upon a solid and scientifically grounded foundation."

The "Institutes-course" always given to German and Austrian law students he regards as a useful preface to special instruction in particular subjects and, to quote further (p. 42):

"Similarly, in my opinion, in American university law schools the students ought to be given an introductory lecture course, which should present, so to speak, 'Institutes' of the common law. Every department into which the American law is divided, whether as common law or equity, employs certain common elementary ideas and fundamental legal concepts which the student ought to be made to understand before he is introduced into the difficult analysis of cases. Concepts such as choses in action, person and property within the meaning of the law, complaint and plea, title and stipulation, liability and surety, good faith and fraud, should, in these introductory lectures, be given to American students in connection with a system of the law, even though this should include only the general fundamental features. They should not, as usually occurs today, come to the students unsystematically and unscientifically, as scraps of knowledge more or less assimilated out of law dictionaries and indiscriminate reading of text-books." "A scientifically constructed survey of the main sources of the common law and of their relation to one another; of the concepts of customary and positive law; a short external history of the law, which should include the origin and development of the English courts of justice; a brief exposition and development of the nature and extent of the concept of equity; a description of that institution so important for Anglo-American law, the reports, and of the concept of precedent; finally also a glance at the phenomenon of statutory law (legislation) and its nature and forms; all these things and much else connected with them ought to be furnished the students at

the beginning of their studies, before their introduction to the analytical study of the cases. The fact that this ground can be covered only in elementary and summary fashion need not prevent the presentation from being thorough and scientific.

"This, then, would be another task to be accomplished by an 'Institutes-course' in the English common law. A further service would be the introduction of the students from the beginning into the atmosphere peculiar to legal science, through direct lecturing on the part of a living teacher. I attach very great importance to the direct lectures of a legal scholar who has been trained in a thoroughly scientific manner. It is simply doctrinaire exaggeration on the part of many contemporary law teachers in American universities, when, in order to preserve the exclusiveness of the case method as a unique, hermetically sealed system of teaching, they reject every lecture *a limine* as a means of instruction; when they describe such lectures as mediaeval and therefore obsolete; when they declare that lectures today do not easily arouse, and still less easily hold, the interest and attention of the students. In the same way that the students put down in their note books the main points which are brought out by discussion in the pure case method exercises, so they can just as well jot down the train of thought of a series of such lectures, in which the elemental concepts of the law and the most important details of legal terminology are explained to them. Such a course of preliminary lectures, whose nature throughout should be that of talks to beginners, would, in my opinion, with great profit, take the place of the now customary, unscientific introduction to the law, through law dictionaries and discursive reading."

This Institutes-course Dr. Redlich thinks should occupy three or four weeks of the first third or half of the opening year. The study of case-books might proceed at the same time, but if (p. 44) "during the first few weeks of study, the main task of the pupils consisted in a course of 'Institutional Lectures,' then, in my opinion, we should essentially shorten and diminish that confusion and obscurity which—as is admitted by even the most zealous advocates of the exclusive case method—troubles most of the young men at present during a large part of their first year in

their attempts to analyze the cases. They would enter upon the analysis with a certain amount of definite knowledge, and certainly with a better understanding of the sense of the entire machinery of the law. They would learn more quickly to group under several general heads the particulars with which the study of the cases supplies them, and thus from the beginning would introduce a certain orderly arrangement into their growing knowledge of the law. In other words, the accumulation of the material of legal thought, taking place daily through the analytical exercises, would from the beginning take place systematically and with a certain consciousness of purpose."

Dr. Redlich also thinks it advisable at the end of his course, "to furnish the American law student once more, before he steps out directly into practical legal life, a certain general summing up and survey of the law. If the student has mastered all essential institutions and doctrines of the common law during his three years' course, through the analysis of countless cases, he will certainly now be sufficiently matured to undertake, with full understanding, two important tasks. First, he should be able to grasp the general scientific theory of the law as one of the great dominating *phenomena* of human civilization and human thought. Secondly, he should now be fully prepared to cast to great advantage a comparative glance at that second mighty system of law which has shaped the history of humanity, namely, the Roman law."

It is evident that a plan of legal education such as Dr. Redlich thus recommends is a combination of the case-book and lecture system. To a certain extent, such a combination is now made in every law school professing to follow the case method. There are, to quote his words (p. 30) "broad, introductory lectures" to give an "elementary knowledge of law." The professor does not discuss cases on torts with his classes, until he has told them what a tort is; when it is also a crime; and how such a wrong can be redressed by a civil action. If he compiles a case-book, he will be very apt to put in it somewhere (perhaps as in Beale's *Conflict of Laws*, at the close of a third volume), a general summary of doctrine, properly indexed for easy reference.

No case-book can serve its purpose well unless its study is preceded or supplemented by more or less of such explanations.

A law school can never entirely supersede the lawyer's office as a place of preparation for the legal profession. No small part of a man's education for the bar must be sought at the bar. The world, for all men, is the best university. It may be doubted, therefore, whether Dr. Redlich is right in (p. 46) proposing that what is now generally received as the normal term of legal study shall be extended from three years to four. He would, however, at the same time reduce the period of previous college study by a year, by setting in that "a more rigorous pace" (p. 47).

If three years is as long a time as most men can devote to attendance at a law school, the graduates of those law schools which pursue the case method strictly and exclusively will unquestionably enter the bar with less legal knowledge than the men trained at those which maintain the other system. A more important question is whether they can use what they do know to better advantage.

An answer to this will always depend somewhat on the mental characteristics of the particular man. Nature makes lawyers, as she makes poets. No kind of legal education can create him. It can only bring out what is in him, and give him material to work upon. By men of high intellectual power more can be got out of a scanty and partial education than the ordinary student can derive from the best and fullest.

Systems of legal education are generally, and always should be, planned to suit the needs of the average man. For him any strict and exclusive adherence to case-books as implements of instruction is certainly undesirable. For him also any strict and exclusive adherence to the method of lectures is certainly undesirable. He needs to have things made plain to him. He needs something to which to refer for a statement of fundamental principles in proper form. His education should be mainly in universals. Exceptions to general principles, engrafted upon them by particular decisions of courts, he may be left largely to study for himself, when, in later years, matters are put in his charge which make them important. A pure case system is better for

him than a pure lecture system. It is better for anybody. But a system that combines instruction in elementary law with the study of cases and of text-books is better still.

In its best form, instruction whether from text-books or case-books is much the same. It consists in asking questions in the class room, based upon a study of a book out of the class room, and questions not as to what rules the book lays down, but as to what leads to those rules, and what are their proper limitations. Let the instructor put a case to a student, not such exactly as he may have read of in this book, but while in some points similar, in others divergent. This calls for reasoning, more than memory.

In the great majority of American law schools, text-books are used in some courses, and lectures in some. In every American law school, cases are studied out of the class room, either with a view to their future discussion in the class room, or because they have been referred to by the instructors as authorities for doctrinal statements of particular importance. In the smaller law schools, or in advanced classes numbering but a few scholars, in some of the larger ones, cases are thus studied in the original reports. It is, notwithstanding the chance to read the head-notes first, the ideal mode of case study, except for the practical difficulty which arises when several men desire to use the same volume at the same time; and this can be partly remedied by resort to the plan of reading aloud. In the largest law schools this is impossible, and hence the case-book has been evolved, which is in its best form a combination of cases, explanatory statement, historical documents, and comment.

The first one published in the United States was issued at Hartford in 1810 by Zephaniah Swift, one of the judges of the supreme court of Connecticut and for many years also a successful teacher of law to students in his office, which came to be known as Swift's Law School. It was a treatise on evidence, of 174 pages, with an appendix, containing the principal cases to which reference was made in it, covering 68 pages. The best of these compilations are those which, when put together by men of superior mind, contain the most explanations of history and doctrine.

Thayer's *Cases on Constitutional Law* may serve as an instance. This begins with a dozen pages delineating the nature of constitutional government; then gives 8 pages to two or three old cases preceding the commonwealth; then 9 pages of an institutional character; then a case occupying one page; and then 5 pages from Locke on government. Of the part devoted to the written constitutions in the United States, the first seven pages are given to the learned note of the reporter to Paxton's case, concerning writs of assistance, supplemented by further notes by Professor Thayer himself. On page 81 commences a series of extracts from the *Journals* of the continental congress and the *Federalist*, running to page 94. An admirable discussion of the judicial power to disregard unconstitutional statutes extends from page 146 to page 154, and a note on administrative rules and advisory opinions from page 171 to page 177.

A book of this character, in the hands of a capable instructor, is both an intelligible guide for the ordinary student and a contribution to legal literature.

On the other hand, a teacher who endeavors to confine himself to dealing with reported cases alone, giving no explanations or illustrations by word of mouth, will inevitably fail to impress himself or his subject on the mind of the ordinary man whom he meets in the class room.

As Dr. Redlich somewhat misconceives the ordinary meaning of the term "case-method," so he still more obviously misconceives the meaning of the term "text-book method." "The essential feature of this," he says (p. 8), "is that from recitation period to recitation period, the students are assigned a specified portion of a regulation text-book to study, and for the most part to memorize: this is then explained by the teacher and recited on at the next period. In this method of instruction one part of the hour is occupied with the more or less purely mechanical testing of the knowledge learned by the students, the so-called quizzing."

No real teacher of law has ever used a text-book in that manner. Students are not expected, for the most part, to memorize what they find in it. Memorizing is confined to a few general

maxims, rules and definitions. Nor is the recitation ever a mechanical testing of the knowledge learned. It is a means of ascertaining what conceptions of the subject in hand the student has gained, and how he is able to apply these conceptions in working out questions of liability on supposed states of fact, put before him by the instructor. It is a test of his understanding, rather than of his recollection.

In one, at least, of our American law schools, instruction in lectures or by text-books has been for many years supplemented by the use of a set of cases on the same subject printed separately, to be read *pari passu*. Such sets are easily enlarged, and have been commonly arranged topically in a sort of portfolio.

The American law lecturer, it may be added, unlike the German law lecturer, is usually glad to welcome the interposition of a question by any of the class, who may feel that he needs some further information to enable him fully to understand what he has heard. Such questions often give the lecture much the aspect of a Socratic discussion. Indeed, the first quarter of the class room hour is not infrequently given to questions from the desk on the subject of the preceding lecture.

At the Yale Law School, the first year students have always received instruction, at the beginning of their course, as to the general sources and characteristics of law in the United States. At Harvard it is now proposed to institute something in the nature of such a course, beginning next fall. The reason for this is thus stated in the *Harvard Law Review* for June, 1915 (p. 630):

"Dean Thayer pointed out in his annual report that one of the difficulties of the first year law student is his tendency to entertain a view of the law as a mysterious collection of disjointed materials placed in water-tight compartments. On entering the Law School he is apt to regard contracts and torts, for example, as related to each other in no more intimate way than mathematics and literature appeared to be related to each other during his under-graduate days. The changes proposed in the law school will consist, first, in the establishment of a new half-course on general liabilities, which will furnish the necessary groundwork for the study of contracts, agents, torts, etc. In the sec-

ond place, a system of rotation in the work of the first-year men has been arranged for the various professors engaged in this instruction, so that each will have a share in handling the same course. In this way the student will come into contact with different teachers at the very outset of his work and will be impressed to a much greater degree than formerly with the essential interrelation of all branches of the law."

We venture to predict that some such initial course will eventually be recognized as necessary wherever the case-book system has taken root; and that the case-book itself will either embody more in the line of direct statement by the compiler or be supplemented by lectures to a greater extent than is now customary. Professor James Brown Scott, writing as general editor of the American case-book series, in 1913, the preface to Hall's *Cases on Constitutional Law*, truly says, "the present case-books not only devote too little attention relatively to the inculcation of knowledge, but they sacrifice unnecessarily knowledge to training."

It should be observed that the fundamental conception of American common law, from which Dr. Redlich proceeds to all his conclusions, is that (p. 35), "Common law is case law and nothing else than case law."

This is hardly even a half truth. The common law on any point existed, in theory at least, before any case in which it may be applied. It was the practice of the people, or the rule which to them seemed naturally right.

So he asserts (p. 37), that "Common law is case law, and the handling of such law is the practical calling for which the American student demands preparation." This ignores the fact that American law students must be taught something of written law and much of the rules for construing and applying it. The whole tendency of our times is to the narrowing of the field of common law by the extension of that of statutory enactment.

To conclude, the country has certainly reaped one great advantage from the adoption of the case method, wherever it has been in any substantial degree exclusively pursued. We have too large a bar. It would make for the public good were there fewer and better lawyers. The case method, where it has been most

strictly pursued, has caused many young men, after a few months of legal study, to abandon it forever. They have found what they had been accustomed to hear called legal science unscientific. They have become disgusted at endeavoring to pick it out and piece it together from a scrap heap of judicial decisions, some inconsistent with others. It has been taught, not as a whole, but in disconnected fragments. They looked for harmony and orderly progression. They have found at the outset confusion, if not disorder. They have been treated as antiquaries, and fed with historical processes, without any attempt to impart a knowledge, arranged in systematic form, of what has been achieved, and what further may be fairly anticipated.

Dr. Redlich is of the opinion that the case-book method has brought another advantage to the country, because, to use his words (p. 63), "it develops a new theoretical calling, that of the non-practicing law teacher of America. By this means, for the first time in a common law jurisdiction, the study of this law has become a career, an independent profession."

This is true; but it has created a new peril. Wherever a man goes immediately upon graduation from a law school into the chair of a law teacher, he is not unlikely to give instruction of too academic a character, and to find in reported cases too much of scientific method. The best instructors in law, *ceteris paribus*, are men who have had some practice at the bar, or on the bench. A strong man can triumph over the want of it. A weaker one may enfeeble his class by failing to call their attention to the human element in whatever judges may say or do; to the power of circumstances to affect their conclusions; and to what is often due to the atmospheric pressure of their environment.

THE BICAMERAL SYSTEM IN STATE LEGISLATION

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I

The submission of proposals for the abolition of the state senate to the people of Oregon at the two preceding general elections is occasion for a summary of considerations in reference to the bicameral system of legislation.

The bicameral system has been so long and so widely prevalent that until very recently its "necessity" has been almost universally regarded as "a demonstrated truth."¹ The British legislature, "the mother of parliaments," is a development from the assembly of "estates." Five distinct "estates" were present in the "Model Parliament" of 1295, but through the consolidation of interests, the organization of two legislative chambers, the House of Lords and the House of Commons, was soon evolved. The origin of the bicameral system was thus "not owing to any conviction that two houses would work better than either one or three, but was a matter of sheer accident," and was not "the invention of any clever constitution-maker."² The bicameral system of legislation, generally based upon English precedent, has usually followed the extension of constitutional government, and at present most national legislatures consist of two chambers.³ In France and Haiti, although for ordinary legislation the

¹ DeToqueville, *Democracy in America*, Reeve's trans., vol. 1, p. 87; Esmein, *Droit Constitutionnel*, 5th ed., p. 90.

² Freeman, *Comparative Politics*, pp. 21-22, 234. See also Esmein, *Droit Constitutionnel*, 5th ed., p. 90. "This theory, which was unknown to the republics of antiquity—which was introduced into the world almost by accident, like so many other great truths. . . . is at length become an axiom in the political science of the present age." DeToqueville, *Democracy in America*, Reeve's trans., vol. 1, p. 87.

³ The exceptions are Bulgaria, Costa Rica, Greece, Honduras, Luxemburg, Monaco, Montenegro, Nicaragua, Norway, Panama, Salvador and Servia. The

two houses act separately, for changes of the constitution the two are combined into one. Some independent states formerly having single representative chambers have changed to the bicameral system, and some, though fewer, changes have been made from the bicameral to the unicameral system. The British House of Lords has been finally so shorn of its power as practically to leave a unicameral legislature for the British Empire.⁴

Although in the United States and the Australian Commonwealth all the individual states have bicameral legislatures, the unicameral system either is exclusively adopted or largely predominates in all the other federations but one, and in that one (Argentina) a large minority of the States have unicameral legislatures. In the German Empire fifteen of the twenty-five States have unicameral legislatures. Most of the individual States of the Latin-American federations have but a single chamber.⁵ The cantons of Switzerland have single representative chambers in all cases where the legislature does not consist of a primary assembly. Although, in general, "the bicameral system accompanies the Anglican race like the common law,"⁶ there are important exceptions to this generalization. In the Australian colonies the bicameral system had been adopted, after experience with the unicameral system, half a century before the Commonwealth was established. On the other hand in the Dominion of Canada the older provinces except Quebec and Nova Scotia have abolished their original upper legislative chambers, and none of the newer provinces has ever had more than one chamber, so that at present only two of the nine Canadian provinces have bicameral legislatures.⁷

reestablishment of the council of state in Greece effects an approach to the bicameral system. In Norway the legislature divides itself into two chambers for legislation, but conflicts between the two chambers are finally settled by joint session.

⁴ Cromwell's Parliament consisted of a single house.

⁵ For information on South American conditions indebtedness has been incurred to Prof. William R. Shepherd of Columbia University.

⁶ Lieber, *Civil Liberty and Self-Government*, ed., 1874, p. 194.

⁷ There have been some movements toward the abolition of the upper chamber of Nova Scotia. In the South African Union conflicts between the two houses are finally settled by the combination of the two houses in joint session.

Over half of the American colonies began the representative system with single legislative chambers, but in the others the bicameral system, whether in imitation of the English system or on account of local causes, was established from the first. Although the single chambers persisted in some of the colonies longer than in others, only one such legislature, that of Pennsylvania, was left at the end of the seventeenth century.⁸ The unicameral legislatures of the colonies became bicameral either by the addition of a representative assembly to the assembly consisting of the governor and council or by the division of an original single chamber into two houses. In the latter case, "as a general rule the division grew out of the distinction already existing in the assemblies between the magistrates [i.e., the governor and assistants] and the deputies. The magistrates had acquired an important and distinct place in the government from the powers which they came to exercise during the recess of the general court, or from the fact that they were separately appointed by the King or proprietor, and thus represented interests distinct from those of the deputies. . . . The distinction between the magistrates and the deputies, as two branches of the government, preceded their division as two houses of one Legislature."⁹ Generally local causes were apparently more potent in this development than was English precedent.

The Congress of the Confederation consisted of only one house. When the Federal Convention assembled all of the States had legislatures of two chambers except Pennsylvania, Vermont, and Georgia, the latter of which had reverted to the unicameral system. The provision for two houses of Congress met with little opposition and it is apparent from contemporary discussion that the bicameral system was then in general favor, especially for the States. But there was some decided opinion to the contrary. This system was adopted in Georgia in 1789, in Pennsylvania in

⁸ Moran, *Johns Hopkins University Studies in Historical and Political Science, Thirteenth Series*, pp. 211-58; Morey, *Annals of American Academy of Political and Social Science*, vol. 4, pp. 211-15 (1894).

⁹ Morey, *Annals of American Academy of Political and Social Science*, vol. 4, p. 215 (1894).

1790, and in Vermont in 1836. All the new States have had two legislative chambers from the beginning. And representative government for the territories and dependencies of the United States has included the bicameral system in every case. "The existence of dual chambers became a recognized feature in constitution making in this country, and ceased to be a subject of discussion."¹⁰ "This bicameral or double chamber system of legislation is an integral part of representative government."¹¹

But, although there has been some imitation of the national and state governments in establishing two chambers in our city councils, the system has not generally been approved for city government and has been largely abandoned where adopted. And the other local councils have always been single-chamber bodies. Further, a fact of much greater importance in this connection but generally overlooked, the constitutional convention has always consisted of a single house. "The growth of the influence of the constitutional convention is unquestionably one of the most remarkable manifestations in the field of popular government in the United States today. The convention has been gaining strength year by year and has been absorbing powers that it earlier did not possess. . . . This convention, oddly enough, is an assembly of a single chamber, from which the founders of this government strove so diligently to keep us free."¹²

The legislative power under the "Provisional Government" of Oregon was vested in a single house.¹³ But the territorial government followed in a few years, and then the state government, each with the orthodox division of the legislature into two branches.

¹⁰ *Senatorial Term*, *American Law Review*, vol. 4, p. 18 (1869).

¹¹ Habberly, *Bandon (Ore.) Recorder*, October 13, 1914.

¹² Oberholtzer, *Referendum, Initiative, and Recall*, 2d ed., pp. 71-72.

¹³ Lieber was in error: "The bicameral system accompanies the Anglican race like the common law. . . . No instance illustrating this fact is perhaps more striking than the meeting of settlers in Oregon territory, when Congress had neglected to provide for them. . . . The people met for the purpose of establishing some legislature for themselves, and at once adopted the principle of two houses. It is to us as natural as the jury." *Civil Liberty and Self-Government*, ed. 1874, p. 194.

But recently the "dual chamber" has become "a subject of discussion" in Oregon, and, more recently, elsewhere. In 1912 a provision for a legislature of a single house of sixty members (the number of members of the present house of representatives) was contained in a constitutional amendment submitted by the People's Power League of Oregon to the voters under the initiative.¹⁴ The amendment failed, but it contained such a mass of provisions that it was impossible to determine the voters' attitude on this particular provision. At the next session of the legislative assembly a proposition submitted to the senate for a constitutional amendment establishing a state "commission form of government"—contemporaneous with the similar movement in several other States—received only three votes.¹⁵ In 1914 the question of the abolition of the senate was submitted separately, again under the initiative, by the Oregon State Grange, the Oregon Federation of Labor, the People's Power League, the Farmers' Union, the Farmers' Society of Equity, and the Proportional Representation Bureau.¹⁶ But the proposal was defeated by a vote of 62,376 to 123,429.

II

However different the conditions in the various governments of the world at present, as at other periods of their history, the discussions of the merits and demerits of the bicameral system of legislation are generally carried on with little or no regard to questions of time, place, or circumstance.¹⁷ And especially is there generally failure to make proper distinction in this regard between sovereign, or practically sovereign, States and component members of such States. The present discussion is directly

¹⁴ *Oregon Referendum Pamphlet*, 1912, no. 362, art. 4, sec. 2, p. 212.

¹⁵ *Oregon Senate Joint Resolution*, no. 21, *Senate Journal*, 1913, pp. 381, 485-486. A similar proposition failed at the session of 1915.

¹⁶ "The senate and the office of senator in the legislative assembly of Oregon are hereby abolished. All provisions of the constitution and laws of Oregon in conflict with this section are hereby abrogated and repealed in so far as they conflict therewith. This section is in all respects self-executing and immediately operative." *Oregon Referendum Pamphlet*, 1914, no. 350, p. 82.

¹⁷ Cf. Morgan, *Contemporary Review*, vol. 97, pp. 533-534 (1910).

concerned only with the legislatures of the non-sovereign American States under existing conditions, and particularly with those States in which the referendum has been established.

The mere general prevalence of the bicameral system has usually seemed to be its best justification. "An institution which appears with such a character of generality and permanence answers incontrovertibly to a real need."¹⁸ And the advocates of a single chamber have generally been regarded as mere visionaries. "There have not been wanting at all times minds of a high order, which have been led by enthusiasm, or a love of simplicity, or a devotion to theory, to vindicate such union with arguments striking and plausible, if not convincing."¹⁹ It is true the world over today that the agitation against the bicameral system comes chiefly from "radicals," although many radicals and even Socialists are on the opposite side.

"Visionaries" have been firmly convinced that the well-nigh universal notion of the usefulness of a second chamber has no foundation in truth, but is founded upon "mere prejudice—authority-begotten and blind custom-begotten prejudice."²⁰ "There never was any good reason for its existence except as a copy of the English House of Lords."²¹ "In this country, we are so bound down by the forms early prescribed, and are so circumscribed by ingrown prejudices, that we have shrunk from adopting the single legislative body."²² Such prejudices are considered the more unreasonable in view of the fact that "even in England at the present time the dual system has been practically abandoned and the upper house shorn of its importance."²³ Hope for departure from "blind custom" in the organization of

¹⁸ Duguit, *Droit Constitutionnel*, vol. 1, p. 367.

¹⁹ Story, *Commentaries*, vol. 1, sec. 559. "The proposal for the abolition of the Oregon senate has been derided by its opponents generally as a 'freak measure.' "

²⁰ Bentham, *Works*, Bowring's ed., vol. 4, p. 445.

²¹ Gill, *Pacific Grange Bulletin*, May 1913, p. 123. See also People's Power League, *Referendum Pamphlet*, 1912, p. 221.

²² Medill McCormick, reported in *Oregon Journal*, July 27, 1913, sec. 5, p. 5, col. 6.

²³ Hodges, Message to Kansas Legislature, reprinted in *Oregon Journal*, June 3, 1913, p. 8, col. 3. See also, especially, *East Oregonian*, May 16, 1913, p. 4, col. 1.

the state legislature is seen in the very general abolition of the "imitation half" of city councils.²⁴

After habit, the most important consideration in the maintenance of the bicameral system has been the fact that it has seemed that the danger of the abuse of legislative power cannot otherwise be avoided. The bicameral system is thus a necessary part of the system of checks and balances. "If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it, within itself, into distinct and independent branches. In a single house there is no check but the inadequate one of the virtue and good sense of those who compose it."²⁵ "There can scarcely be any other adequate security against encroachments upon the constitutional rights and liberties of the people. . . . The only effective barrier against oppression, accidental or intentional, is to separate its operations, to balance interest against interest, ambition against ambition, the combination and spirit of dominion of one body against the like combination and spirit of another."²⁶ Not only individual rights are thus protected, it is said, but, further, the executive and judicial departments are protected against the otherwise inevitable encroachment by the legislature.²⁷

Such arguments *imply* the absence of effective constitutional restrictions upon legislative action, but are continually repeated in discussions concerning constitutions whose restrictions are enforced against the legislature by the courts, as in the case of Congress and the state legislatures of today. Even American writers generally seem to be entirely oblivious of the existence of constitutional limitations in this connection.

²⁴ People's Power League, *Referendum Pamphlet*, 1912, p. 221.

²⁵ Wilson, *Elliot's Debates*, vol. 5, p. 197.

²⁶ Story, *Commentaries*, vol. 1, sec. 558. See also *ibid*, sec. 551; Mill, *Representative Government*, ch. 13; Marion County Taxpayers' League, *Oregon Referendum Pamphlet*, 1912, p. 223.

²⁷ Burgess, *Political Science*, vol. 2, pp. 107-108; Esmein, *Droit Constitutionnel*, 5th ed., pp. 105-106. "Experience in all the States had evinced a powerful tendency in the legislature to absorb all power into its vortex. This was the real danger to the American constitutions." Madison, *Elliot's Debates*, vol. 5, p. 345.

The state legislatures are, in a sense, the direct legal successors of the British Parliament. What Blackstone said of the transcendent power of that body is as true today as it was when he wrote the *Commentaries*.²⁸ But "the strong language in which the complete jurisdiction of Parliament is here described is certainly inapplicable to any authority in the American States unless it be to the people of the States when met in their primary capacity for the formation of their fundamental law; and even then there rest upon them the restraints of the constitution of the United States, which bind them as absolutely as they do the governments which they create."²⁹ "A history of state legislatures would be largely concerned with the successive development of various methods of curtailing the almost absolute power which these bodies originally possessed. . . . This general movement has manifested itself in the transfer of legislative power from the legislatures to the courts, to the people, and to the governor"³⁰

Whatever the view which generally prevailed in the early days of our government as to the power of the courts to pass upon the constitutionality of the acts of the legislature, the vast possibilities of constitutional limitation could not have been then appreciated.

The federal constitution in its original form placed various restrictions upon the legislatures of the States, and amendments, particularly the fourteenth amendment, have added to these restrictions. The restrictions have marvelously grown at the hands of the courts. Further, federal legislation encouraged by a liberal interpretation of the powers of Congress by the courts, has occupied and thus closed or limited fields once fully open to state legislatures. So it has resulted that although this centralization of power has been offset to a slight degree by some decentralization by way of the practical delegation of legislative power to the States by Congress, the legislative powers of the States have been very greatly diminished. "Once the question was

²⁸ Vol. 1, pp. 160-161.

²⁹ Cooley, *Constitutional Limitations*, 7th ed., pp. 125-126.

³⁰ Mathews, *American Political Science Review*, vol. 6, pp. 220-221 (1912).

whether the States would destroy the national government. Now the question seems to be whether the national government shall be permitted to destroy the States."²¹

But the state legislatures have suffered even more from limitations imposed by the state constitutions. "The people of the States, when making new constitutions, have long been adding more and more prohibitions and restraints upon their legislatures. The courts, meantime, in many places, enter into the harvest thus provided for them with a light heart, and too promptly and easily proceed to set aside legislative acts. . . . There has developed a vast and growing increase of judicial interference with legislation."²² The legislatures are thus bound by innumerable limitations in the way of direct prohibitions, elaborate regulation of the organization and procedure of the departments of government, the withdrawal of subjects of ordinary legislation from their jurisdiction by the enactment of details of statutory law in the constitutions, and limitations upon the length and frequency of their sessions. Moreover, the governor's control over legislation, in almost all of the States, has been steadily enlarged by both law and convention. Further, the initiative and referendum, fast extending over the States, subject to popular control whatever power is left to the legislature, and, finally, the recall, following at some distance the initiative and referendum, delivers over the individual members of the legislature to the mercies of the people.

From the operation of all these limitations, federal and state, the state legislature is today certainly "little more than a shadow of its former self."²³

Not only in comparison with the sovereign Parliament of Great Britain is the state legislature now a feeble institution, but in general it compares little better with legislatures of other countries organized under "written" constitutions; for in most such

²¹ Rogers, *North American Review*, vol. 88, p. 323 (1908).

²² Thayer, *Legal Essays*, p. 40.

²³ Oberholtzer, *Referendum, Initiative, and Recall*, 2d ed., pp. 71-72. See also Morgan, *Contemporary Review*, vol. 97, p. 544 (1910); Dealey, *Our State Constitutions*, p. 9; Croly, *Proceedings of the American Political Science Association*, vol. 8, pp. 122-32 (1911).

cases the constitutional limitations are comparatively slight, the constitutionality of legislative action is finally determined by the legislature, and the legislature is itself the constitution-making authority.

Whatever the merits of the argument for the division of the legislature in the case of all such governments as a means of preventing abuse of power, its application to the legislature of the American States, at least those States in which the acts of the legislature are subject to direct popular control, is extremely absurd.

By far the most valuable precedents to be considered in connection with this question of the division of the American state legislature are to be found in the component states of other great federations. In most of these states, as has been observed, the legislature has only one chamber. The safest comparison may doubtless be made with the Canadian provinces, seven of the total nine of which have unicameral legislatures. It is true that the provinces have enumerated rather than residuary powers, and that the Dominion Parliament has more extensive powers than the United States Congress. But there is little positive limitation of provincial legislation contained in either federal or provincial constitutions, and the provincial legislatures may amend the provincial constitutions. The veto power of the imperial government, exercised through the governor-general, has been for the most part interpreted away. There is no check provided by separation of powers between the executive and legislative departments of the province. Popular control over the legislature through the referendum is unknown. Moreover, the functions actually exercised by the Canadian province are more extensive than those exercised by the American State.³⁴ If, under such conditions, the division of the legislature into two branches is not necessary to check its abuses of power, it would seem unnecessary to divide the American legislature, with all its limitations, against itself, in order to prevent its encroachment upon the rights of individuals or upon the other de-

³⁴ Ford, *North American Review*, vol. 194, p. 691 (1911).

partments of the government. This would seem to be the case especially where legislation is subject to popular control through the initiative and referendum. Under these conditions the legislature approximates the status of the constitutional convention—always consisting of a single house.³⁵ “Since the people have obtained the referendum power the senate is only an obstruction.”³⁶

Advocates of the bicameral system have generally insisted it will not serve as a sufficient check against the abuse of legislative power unless the two houses are composed upon different principles. “This check will be most effectually obtained by a coördinate branch of equal authority, and different organization.

. . . . If each branch is substantially formed upon the same plan, the advantages of division are shadowy and imaginative It may be safely asserted that, for all the purposes of liberty, and security, of stable laws and of solid institutions, of personal rights, and of the protection of property, a single branch is quite as good as two, if their composition is the same and their spirits and impulses the same

It will only be a duplication of the evils of oppression and rashness, with a duplication of obstructions to effective redress.”³⁷ European conditions are thus satisfactory in this regard. “In Europe there is always a difference of political complexion generally resting on a difference in personal composition. There the upper chamber represents the aristocracy of the country, or the men of wealth, or the high officials, or the influence of the crown and court; while the lower chamber represents the multitude.”³⁸

But only “shadowy and imaginative” advantages, from this point of view, can now come in this connection from duplication in our state legislatures. “The two chambers have been so much assimilated to each other in regard to the basis of representation and the term of office, that they have become more

³⁵ Even where the action of the convention is final there is no division of organization.

³⁶ Spence and others, *Medford (Ore.) Tribune*, October 27, 1914.

³⁷ Story, *Commentaries*, vol. 1, sec. 699. See also *ibid.*, sec. 554.

³⁸ Bryce, *American Commonwealth*, ed. 1913, vol. 1, p. 186.

and more like two divisions of the same chamber; except in a few States in New England the conception of the upper house as representing a fiscal or a communal unit has entirely disappeared; manhood suffrage has become all but universal; the age and property qualifications have been swept away; and 'senators' and 'representatives' are distinguishable in little more than name. The state senates are, therefore, no longer regarded, or trusted, as checks upon the houses of representatives."³⁹ Moreover, both branches of the legislature in all of the States are usually under the control of the same political party.⁴⁰

As a matter of fact the division of the state legislature into two chambers has at no period been a very effective means of preventing the abuse of legislative power. The strongest evidence for this view is the ever-increasing multiplication of constitutional limitations upon the legislature's activity.⁴¹

The bicameral system has been considered as an obstacle to corrupting influences in the legislature. "Some protection is . . . afforded against a sinister combination of private interests to pass measures opposed to the public good; since a combination is at any rate more easily managed in one chamber than in two."⁴² But the division of the legislature is well adapted to effect the success of these "sinister combinations." It prevents concentration of the attention of the public upon the operations of their representatives, and gives opportunity to the representatives to evade responsibility for their actions. "The people of Oregon would have better control of their legislature and would obtain better results with a single-house legislature. There would be but one house to watch instead of two. There would be an end to much buffeting and buncombe."⁴³ "By abolishing the state senate, the people will concentrate responsibility on the representatives alone, and thus destroy the habit of poli-

³⁹ Morgan, *Contemporary Review*, vol. 97, p. 543 (1910). See also Woodburn, *American Republic*, p. 201, note.

⁴⁰ Cf. Munro, *Government of American Cities*, p. 185.

⁴¹ Cf. Morgan, *Contemporary Review*, vol. 97, p. 544 (1910).

⁴² Sidgwick, *Elements of Politics*, 2d ed., p. 467. See also Story, *Commentaries*, vol. 1, sec. 556.

⁴³ *East Oregonian*, May 16, 1914, p. 4, col. 1.

ticians and pledge-breakers of passing a bill in the house and 'killing it in the senate,' of passing a bill in the senate and 'killing it in the house.'"⁴⁴ Moreover the complication of the system is an obstacle to the detection of sinister legislation by the representatives themselves. "The more complicated the matter, the greater the number of those who are unable to see clearly into it; and even to those who do see into it with the utmost possible degree of clearness, the greater the mass of time and labor expended on it. But the more complicated it is, the more easy will it be for those who apply themselves to seek a sinister profit to themselves at the expense of the rest of the community, to succeed in such their endeavor, to-wit, by reason of the inability of those whose interests are thus sacrificed—the inability of seeing into and opposing those same mischievous designs."⁴⁵

The same considerations which apply to the division of the legislature as a security against abuses of power by the representatives of the people will apply to the division of the legislature as "a salutary check . . . upon the people themselves, against their own temporary delusions and errors."⁴⁶

"The chief advantage of dividing a legislature into two branches is that one may check the haste and correct the mistakes of the

⁴⁴ People's Power League, *Oregon Referendum Pamphlet*, 1912, p. 221. "About the only purpose I have ever been able to see for the two-house system is that it enables the legislator to fool his constituents by getting a measure demanded or promised them through his branch of the legislature, and then using every effort to have it killed in the other branch." Hodges, *Governors' Conference Proceedings*, 1913, p. 258.

⁴⁵ Bentham, *Works*, Bowring's ed., vol. 9, p. 115.

⁴⁶ Story, *Commentaries*, sec. 568. "I see in the greatest number [of the American States] an unreasonable imitation of the usages of England. Instead of merging all the authorities into one, that of the nation, they have established different bodies, a House of Representatives, a council, a governor, because England has a House of Commons, a House of Lords, and a King. They undertake to balance these different authorities, as if the same equilibrium of powers which has been thought necessary to balance the enormous preponderance of royalty could be of any use in republics, founded upon the equality of all the citizens; and as if every article which constitutes different bodies was not a source of divisions. By striving to escape imaginary dangers, they have created real ones." Turgot, in John Adams, *Works*, vol. 4, p. 279. See also Bentham, *Works*, Bowring's ed., vol. 2, p. 307; vol. 4, pp. 425-426; vol. 9, pp. 114-115; Temperly, *Upper Chambers*, pp. 140-141.

other."⁴⁷ "Each house, knowing that the propositions which originate in it will be carefully scrutinized by the other, will be rendered more careful, more deliberate, more awake to objections; even its own reputation is at stake before the public; one house cannot be expected to have a very tender regard for the good name of the other, but will be only too ready to find fault with its conclusions."⁴⁸ In support of this theory, proceedings in Cromwell's Parliament, the single-chamber French legislatures, the Continental Congress, and the single-chamber legislatures of Pennsylvania and Georgia have been cited to show the necessity of the division of a legislature into two houses to secure deliberate action.⁴⁹ But these few examples, taken from remote times and extraordinary conditions, are certainly of very little significance when contrasted with the long and satisfactory experience of the Canadian provinces, the Swiss cantons, and other states with single-chamber legislatures.

However, our bicameral state legislatures have in fact long ceased to be truly deliberative bodies. "The most important function of our early legislatures was deliberation. This has almost entirely disappeared. The rush of the age has invaded the dignified assembly hall, and bills are shot through as by pneumatic pressure. The two most important factors in modern legislation are the lobby and the committee. What deliberation now is granted a measure is given in committee rooms and in private discussion."⁵⁰ The loss of deliberative character of our legislative assemblies is due chiefly to the enormous increase of the business submitted for their consideration. Under the present conditions in our legislatures the elimination of one house would reduce the mass of business submitted, approximately in

⁴⁷ Bryce, *American Commonwealth*, ed., 1913 vol. 1, p. 185.

⁴⁸ Woolsey, *Political Science*, vol. 2, p. 312.

⁴⁹ Garner, *Political Science*, pp. 428-429; Kent, *Commentaries*, vol. 1, p. 222. This argument has been much used in Oregon.

⁵⁰ Orth, *Atlantic Monthly*, vol. 94, p. 734 (1904). "The good effects ascribed or ascribable to the two-house system, may be resolved into this, namely, its acting as a remedy against precipitation. In this case . . . the alleged good is mere matter of presumption; of actually existing good, not a particle does the observation adduce." Bentham, *Works*, Bowring's ed. vol. 9, p. 116.

proportion to the number of the members of the house eliminated, and thus by that much remove the difficulties in the way of deliberate action.

Indeed the shifting of responsibility for due deliberation, under the present system, by one house upon the other, "the division of labor," at times virtually nullifies the bicameral principle of legislation. "Two considerations do not necessarily mean a double consideration There is a tendency to assume that a subject has been considered in the other house, when the consideration there has been very inadequate, or some times one house hastily passes a bill, with the expectation that the other house will deal with it more carefully, and so there is frequently a shifting of responsibility from chamber to chamber."⁵¹ "In a two-house legislature each house depends upon the other. Neither house is as careful as if all responsibility rested upon it."⁵²

A similar sacrifice of the bicameral principle results at times from the practical delegation of legislative power to conference committees and other joint committees of the legislature.

However, even if the bicameral system operates to some extent as a check upon hasty and ill considered legislation, the check may as often be a detriment to legislation. Delays and deadlocks thus occur, and the progress of reform is thus impeded.⁵³

The bicameral system has been defended as a means of introducing "the influence of different interests or different principles"

⁵¹ Hodges, *Governors' Conference Proceedings*, 1913, pp. 259-260.

⁵² *Pacific Grange Bulletin*, April 1914, p. 107. "I do not deem it necessary that the members of this house should spend valuable time in discussing this bill. It has been thoroughly gone over in the senate and its provisions have been declared fair and satisfactory to every one concerned." Latourette, Oregon House of Representatives, *Eugene Guard*, February 12, 1913, p. 2, col. 1.

⁵³ Cf. Amos, *Science of Politics*, p. 239. "The senate checks and kills good measures more often than bad ones. The demand of the age is for efficiency. The people of Oregon want to know *how* to do, instead of *how not* to do." Spence and others, *Oregon Referendum Pamphlet*, 1914, p. 83. *Contra*: "I am convinced that more damage comes from bad bills slipping through than from good bills being killed. In case of the bad bills they will be subject to the referendum, and the good bills cannot be killed, for they will keep coming up until they are passed." Malarkey, quoted in *Oregonian*, March 1, 1914, p. 10, col. 3.

necessary in legislation.⁵⁴ "A second chamber exactly reflecting and expressing the voice of the first chamber would be a gross absurdity."⁵⁵ The representation of "different interests" was the basis of the ancient assembly of estates, "an organized collection . . . of the several orders, states or conditions of men . . . recognized as possessing political power."⁵⁶ But the prevailing democratic doctrine has long demanded that each chamber of the legislature should represent *all* classes of the State.⁵⁷ Indeed should the principles of representation by interests, under modern conditions, be again adopted, its application would be inconsistent with the idea of two houses only.⁵⁸ Under present American conditions the only practicable bases for the division of the state legislature into two houses are those of "territory and time." Indeed in many States the distinction of time no longer exists, and the "different principles" are often thus reduced to the differences in area of elective districts,⁵⁹ and even these differences do not always exist.

But whatever the "different principles" applied, there is no sound reason why for purposes of deliberation the different principles should be represented in different chambers. "So far as . . . [a second chamber] represents a different class of interests or sentiments, it is a pure legislative loss—without any compensating gains—to have one class of interests or views represented at one discussion of a measure and another class at another discussion, instead of having both represented simultaneously to the great gain of the debate and the saving of time, expense and labor. . . . On behalf . . . of effective representation, harmonious coöperation, timely conces-

⁵⁴ Jefferson, *Works*, Federal ed., vol. 4, p. 19.

⁵⁵ Dunraven, *Nineteenth Century*, vol. 61, pp. 353-354 (1907). See also Story *Commentaries*, vol. 1, sec. 554.

⁵⁶ Stubbs, *Constitutional History of England*, vol. 2, ch. 15.

⁵⁷ "The senates have survived the real purpose for which they existed under monarchical institutions and the aristocratic and plutocratic tendencies which still lived after the yoke of monarchy was removed." Eastmond, *Shall the People Rule?*, p. 3, reprinted from *Trend Magazine*, February 1913.

⁵⁸ Lieber, *Civil Liberty and Self-Government*, ed. 1874, p. 199.

⁵⁹ *Senatorial Term*, *American Law Review*, vol. 4, pp. 18-30 (1869).

sion, apt adjustment, and habitual preference of the more pressing to the less pressing claim—a common discussion in one broadly representative chamber must surpass in value any series of discussions conducted first by persons having exclusively one order of interests and afterwards by those having exclusively another order. When the two alternative courses are contrasted in this way, it seems almost absurd that there should be any doubt as to the side on which the advantage lies. And what is here said of the superior value of having all classes of interests represented simultaneously, instead of successively, applies with no less force to the value of having various modes of thought, prepossession, and habitual standards of opinion, all brought to bear in all the discussions of a measure, instead of having some exclusively recognized and enforced at one period of the discussion and the opposite or different ones exclusively recognized on a quite different occasion when the measure has reached a different stage. Nothing but the actual—and, so to speak, accidental—historical evolution of the British houses of Parliament could have made that appear so natural and familiar which is, in fact, wholly alien to all principles of discussion as recognized in other fields of enquiry, and which can never be part of a permanent political system.”⁶⁰

The policy of scattering men apart rather than gathering them together for the purpose of consideration of legislation seems the more absurd in view of the invariable practice in organizing our state constitutional conventions, where the most fundamental provisions of governments are formulated, upon a unicameral basis.

Rather than the revision of the action of one legislative body by another legislative body as a precaution against ill-advised action, there is needed the closer coöperation of the executive and legislative departments in the enactment of law, and the assistance of legislative experts, “legislative librarians” and “bill-drafters,” to the legislature of laymen.

⁶⁰ Amos, *Science of Politics*, pp. 239-240, 245-246. “Each assembly would be deprived of a part of the knowledge it would have possessed in a state of union. The same reasons are not presented in the two houses with the same force. The arguments which have decided the votes in the one may not be employed in the other.” Bentham, *Works*, Bowring’s ed., vol. 2, p. 307.

"Whatever is unnecessary in government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to do harm: you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are that it will impede them somewhere, so nice are they and so delicate."⁴¹ From the considerations above it would seem that the division of the American state legislature effects an unnecessary complication in government, at least when checked by direct legislation, and that the complication for the most part results in evil rather than in good.⁴² But there are other evils inherent in the bicameral system.

The attainment of any unity of purpose and harmony in legislation, difficult enough under the best conditions, is always likely to be thwarted by the division of legislative authority.⁴³ The "hold-ups" and "log-rolling" practiced at times between the two houses, and virtually destroying the bicameral principle, are additional reasons for eliminating one of the houses.⁴⁴ Moreover, the unnecessary expense entailed by the duplication of legislative bodies is a ground for change, often urged in Oregon.⁴⁵

Positive improvement in the quality of the membership of the legislature would probably result from the concentration of responsibility in a single chamber. "The member of a single-house legislature will feel a great responsibility and a greater pride in his work. It will attract the highest capacity and integrity in the State."⁴⁶ Finally, the elimination of one of the houses of the legislature would render much simpler the problem of the reorganization of relations between the executive and the legislative departments of the state governments.

⁴¹ Bagehot, *English Constitution*, p. 175.

⁴² "The state senate of the Oregon legislature is a useless when not positively a mischievous body." Resolution of State Grange, *Oregon Journal*, January 22, 1914, p. 3, col. 3.

⁴³ Cf. Bryce, *American Commonwealth*, Ed. 1913, vol. 1, pp. 185-186.

⁴⁴ Cf. Hodges, *Governors' Conference Proceedings*, 1913, p. 259; Spence and others, *Pacific Grange Bulletin*, March 1914, p. 90.

⁴⁵ E. g. People's Power League, *Oregon Referendum Pamphlet*, 1912, p. 221; Resolution of State Grange, *Oregon Journal*, January 22, 1914, p. 3, col. 3.

⁴⁶ *Pacific Grange Bulletin*, April 1914, p. 107.

THE PRESIDENTIAL PREFERENCE PRIMARY

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The presidency, intended by the framers of the Constitution to be almost exclusively an executive and administrative office, has, in the course of a century and a quarter, not only augmented its executive and administrative authority, but also has acquired a marked political significance. To his constitutional powers the President has added the prerogatives of party leadership, which constitute him the organ for giving effect to the policies of his party at the same time that he exercises a potent influence in the formulation of those policies. The amazing growth of political parties in the United States and the perfection and strength of their organization have been the causes of astonished comment on the part of foreign observers. Moreover, ours has been, in the main, a country of two parties. In view of these facts, the President as party leader becomes a personage of incalculable political consequence. He possesses the political leadership of an English prime minister with the titular dignity which the prime minister lacks.

Since Jackson's time the presidency has achieved a representative character which is the natural result of the President's assumption of political leadership. He perhaps more accurately reflects the mind of the country at large than either of the houses of Congress. The Senate has been wanting in representative character, until the passage of the seventeenth amendment, because of the indirect mode of its election; while the Representatives, because the center of their interests is local rather than national and because their number has been a hindrance to decisive action, have distinctly lost in prestige. The President is able, and finds it to his advantage, to cultivate a nationalistic conception of his office. His position at the head of his party

contributes to this end. The party platform is a statement of national policy. Upon that same platform senatorial and representative candidates make their campaigns. But should the party triumph in the election, the President-elect is the person primarily held responsible for converting the party policies into legislative acts. Furthermore, in the elections held midway between presidential years, representatives and senators base their claims for reelection upon the alleged fact that they have faithfully supported the President in making good the platform pledges of the party. The safety and solidarity of the party require that they do so. From the President's standpoint, it is imperative that he command the support of his party in fulfilling the promises to which he, personally, as well as the party, is pledged. He must, therefore, work to prevent any disaffection, in order that the party may present an appearance of undivided allegiance to its announced principles. Opposition to the administration program there may be. But picture to the disaffected the danger in party disintegration, and the wisdom of remaining regular becomes apparent to all except the most recalcitrant. Strong in the confidence of popular support, the President may not only force the redemption of all party pledges, but may even secure the enactment of measures to which the party is not at all pledged, or which in its platform it may actually have opposed. In the recent repeal of the coastwise exemption clause of the Panama Canal act, party expediency played as large a part as the moral argument. There is every reason to believe that the measure was carried by the sheer weight of the President's authority and prestige.

The formidable powers of the presidential office are thus set forth in order to emphasize the importance of providing a method of election which will secure the expression of the real choice of the voters with certainty and dispatch. The present method leaves much to be desired in these respects. It was well adapted to the election of the President as he was intended to be by the framers of the Constitution, but not to the election of the President in his present character. The rise and growth of political parties soon made short work of the discretion lodged in the elec-

toral colleges, which now serve only to make the presidential election an affair by States. Strictly speaking, presidential nominations should be certified to the electoral colleges subsequent to the choice of electors by the voters; as things are, the nominations, according to state laws, are certified to the election authorities and the names of the nominees appear upon the ballots at the head of their respective lists of electors. From the very first, in the history of presidential elections, certain individuals have been generally recognized as candidates prior to the time for choosing electors; and from the end of Washington's second administration political parties have put forth their candidates who could be voted for by choosing the appropriate list of electors. The presidential election became, practically speaking, a direct election, and this tendency was assisted, after the unintended result of the election of 1800, by the readjustment of the machinery for the election of President in the twelfth amendment.

Before the year 1800 no recognized method for placing presidential candidates in nomination existed. But as men of like political beliefs drew together in parties and the real character of the presidency as a political prize came to be better appreciated, a method was found ready at hand for the formal nomination of candidates. The members of each party in Congress, who were, in that day, the acknowledged political leaders, assembled in party conclave, chose their respective presidential and vice-presidential candidates, and put forth some form of party declaration. But the masses of the voters were not at all consulted on these occasions, and when the democratic movement had gained sufficient headway, it was found that this method of selecting presidential nominees fell considerably short of democratic ideals. Then, too, that Congress or any part of it should have a direct influence upon the choice of the President was entirely subversive of the cherished principle of the separation of powers. The congressional caucus, therefore, fell into disuse, and, after a short interregnum of spontaneous nominations by state legislatures, was succeeded by the convention system which was speedily adopted as the standard method of party nomination.

The convention as an agency for nominating candidates had already been made use of in States and localities. That it was so readily accepted and has so long endured may be accounted for by the fact that, as a means to secure representative government within the party, it is theoretically defensible. It meets for the purpose of naming party candidates and formulating party policies. Although the delegates are frequently governed by more or less precise instructions, the convention still retains the character of a deliberative body. Its relation to the party corresponds to that of Congress and the state legislatures to the nation and the States respectively, and its representative character appears to be self-evident. A close examination of the history of party conventions, however, leads to a different conclusion. The convention system, as it developed from 1830, was a hierarchy of conventions beginning with the primary meeting, which was the only point of contact with the voters, and culminating in the national convention, the members of which were chosen by state or district conventions, which, in their turn, rested upon county conventions elected by the party voters. As Calhoun wrote in declining to become a presidential candidate before the Democratic Convention at Baltimore in 1844: "Instead, then, of being directly or fresh from the people, the delegates to the Baltimore Convention will be delegates of delegates, and of course removed, in all cases, at least three, if not four degrees from the people. At each successive remove, the voice of the people will become less full and distinct, until, at last, it will be so faint and imperfect as not to be audible."

The objection of Calhoun has been met in a majority of the States by the enactment of laws providing that the election of delegates to county, state, and national conventions shall be direct. This change has undoubtedly improved the standing of conventions as representative bodies, and, in the case of the national convention, has paved the way for the direct expression of preferences for presidential candidates through the informal pledging of delegates to the interests of certain individuals.

But notwithstanding this change to the direct election of convention delegates, the clamor against the party convention has

not ceased to be heard. The adoption of direct primary laws in many States is the result. One need only read the debates on direct primary bills in state legislatures or the decisions of state courts upholding the constitutionality of direct primary laws to become apprised of the case against the convention system. It is alleged that the party committees, which constitute the executive side of the party machinery and which are composed of county or district leaders, are constantly scheming to secure the election of delegates to the conventions upon whom they can count to serve their purposes. Assisted by an army of tributary politicians, beholden to them for favors or in expectation of future rewards, and supported financially by various interests seeking to turn the party organization to their own advantage, they are enabled to pack conventions with supporters upon whom they can confidently rely to do their bidding. Even should they fail to secure a convention whose personnel is exactly of the pliable kind to suit their purposes, the resources of the leaders are by no means exhausted. For a determined coterie of wire pullers to obtain control of the temporary organization of a convention, and, with that advantage, of the permanent organization, is no difficult matter—especially when, as usually happens, their opponents work to no common purpose. A friendly committee on credentials will often ensure organization control by settling a sufficient number of contests in favor of the organization contestants. When it is considered how little attention is paid by voters to the election of delegates to nominating conventions and how little an understanding the average voter has of the procedure of a convention, one does not wonder that the unscrupulous and clever politician succeeds so well.

The national convention, it is contended, is just as susceptible of organization control as conventions lower down in the scale. The assertion that conventions are packed with persons, too often attached by bonds of self-interest to the destinies of the organization, is held to be equally true of the national convention. In exercising the prerogatives of making up a temporary roll of the convention and of naming the temporary chairman, it is declared that the national committee possesses exceptional advan-

tages for control. The delegates who are temporarily seated are the ones who determine the personnel of the committees and especially of the strategically important committee on credentials. Considering the manner in which that committee is constituted, it is altogether likely that its report will be a mere ratification of the temporary roll. Upon this committee, in the Republican national committee of 1912, were found members whose seats were contested, representatives of delegations whose seats were contested, and even members of the national committee who had assisted in the preliminary decision of contests. The acceptance or rejection of the report of the committee on credentials depends upon the votes of delegates whose names are on the temporary roll. Thus the unedifying spectacle is unfolded of delegates passing upon their own credentials—assisting by their own votes to seat themselves. It is thus seen that the key to the control of the national convention is found in the control of the national committee, a body whose members are holdovers from the preceding national convention. It should be added that control by a national committee is greatly facilitated by the existence of a large number of delegates who are elected by numerically insignificant constituencies and constitute easily manipulated pawns in the political game.

The inequitable basis upon which the national convention rests has been the most telling criticism urged against it. As long ago as 1864 an effort was made in the Republican national convention to secure a re-apportionment of delegates. Other plans were submitted in 1884, 1900, 1908, and 1912. The controlling party organizations, however, have never seemed willing to surrender the advantages which they derive from the inequity of the system of representation and the demand for readjustment has not until recently been particularly strong or insistent. Since 1912, certain definite, though on the whole unsatisfactory, proposals for reform have issued from the Republican national committee. An abundance of figures are available to prove the case against the present system. The principle, however, upon which the States are represented in party national conventions is so wrong that numerical proof seems hardly necessary. It will

suffice to point out that the fifteen States, including Arizona and New Mexico, from which there was small prospect of a single Republican electoral vote being returned, were entitled in the Republican national convention of 1912 to two hundred and fifty delegates.

Yet another indictment lies against the national convention which, its critics declare, argues conclusively for congressional regulation. Those state laws which have extended their regulatory power over political party machinery, have included within their scope the election of delegates to national conventions. Usually state legislation has accommodated itself to the mode of distribution of delegates prescribed by the national party committees, viz., that two delegates shall be elected from each congressional district and four in the State at large. Two States, however, California and South Dakota, have provided by law for the election of all of the delegates, to which they are entitled, at large. In 1912 the presidential primary in California resulted in the election of that ticket of twenty-six delegates, which had officially certified its adherence to the candidacy of Colonel Theodore Roosevelt. In the fourth congressional district, two delegates belonging to the group pledged to Mr. Taft and residing in that district, were alleged to have secured a majority of votes over two candidates of the Roosevelt group, residents of the same district. This allegation was denied and some evidence brought to support the denial, but the national committee and later the committee on credentials, basing their decision upon the rule for distribution of delegates prescribed by the Republican party, held that the delegates representing Mr. Taft were entitled to the two seats. In so acting, the committee overruled the law of California in accordance with which the whole of the Roosevelt ticket was legally elected. The State of California was clearly within its legal rights but it could not compel the national convention, a body unknown to the Constitution and laws of the United States, to admit delegates elected under its laws. Undoubtedly the convention may admit or cast out whatsoever delegates it pleases, the laws of any State to the contrary notwithstanding. The question readily occurs to one—should a

body be permitted to exercise functions, so fraught with consequences to the welfare of the whole country, without legal responsibility of some kind?

The Democratic national committee and convention were more considerate of the feelings of States. The law of South Dakota is similar to that of California. It provides that candidates for delegate may have their names placed upon the ballot in groups under a caption of five words for each group. Accordingly, a group calling itself the "Wilson-Bryan Progressive Democracy" filed its nomination petition. This was followed by another group under the non-committal title "Wilson-Bryan-Clark Democracy." Still another group made its entry with the motto "Champ Clark for President." The second group of candidates, upon being pressed to declare its presidential preference, avowed its support of Mr. Champ Clark. The election result gave the "Wilson-Bryan Progressive Democracy" ticket 4670 votes; the "Wilson-Bryan-Clark" ticket, 4230 votes; and the avowed Clark ticket, 2700 votes. The state canvassing board, composed of the governor, secretary of state, auditor, attorney-general, and one judge of the supreme court, acting strictly according to the law of the State, gave certificates of election to the first-named ticket, but the chairman of the Democratic state committee, asserting that the Democrats of the State had clearly declared for Mr. Clark, added the votes of tickets number two and three together and gave certificates to the delegates of ticket number two. As a result two contesting delegations from South Dakota appeared at the Democratic national convention. The Democratic national committee in making up the temporary roll, decided for the "Wilson-Bryan-Progressive Democracy" and thus upheld the law of South Dakota. The committee on credentials, however, accepted the certificates of the state Democratic chairman and voted to seat the delegates of list number two. An appeal having been taken from this decision through a minority report, the convention voted to sustain the national committee and admit the delegates certified by the board of canvassers of South Dakota as having been legally elected. The argument urged on one side was "give effect to the will of the people;" on the other,

"sustain the law of the sovereign State of South Dakota." The Democratic party with its traditional respect for the sovereignty of States, accepted the latter alternative.¹ Yet there was no law save its own will to govern the Democratic national convention in deciding this case. At another time and place it may reverse its decision, and thus make its irresponsibility equally obvious with that of the Republican convention of 1912.²

The defects of the national nominating conventions, noted above, are receiving general and serious attention and there seems to be no doubt but that the general current of dissatisfaction will produce some changes in our system of nominating candidates for the presidency and vice-presidency. The reason for the downfall of the convention system in many States and the apparent failure of the national convention lies in the nature of political parties. That the invariable tendency of political parties is to seek first their own interests as organizations and that adequate checks must be provided to counteract this tendency, are facts which in American political history have not been sufficiently recognized. The temptation of the political party is to view organization as an end in itself. As a result the party will no longer exist as an organ for facilitating the expression of public opinion, but will become chiefly interested in offices and spoils. To the end that it may become more efficient in realizing these latter purposes, the party organization tends to become centralized and to fall under the control of a limited number of able leaders who sacrifice a great deal in principle to attain the greatest strength and highest perfection in organization. The obvious remedy is to bring the party organization, as much as possible under the direct control of the party voters. This is the present tendency in many States where the formula of direct government produces the direct nomination of all officers. Sooner or later the same formula will be applied to the nomination of President and Vice-President. Already bills, providing complete machinery for holding a nation-wide presidential primary, have been introduced in both houses of Congress and the present adminis-

¹ *Proceedings, Democratic national convention* (1912), pp. 87-94.

² *Proceedings, Republican national convention* (1912), pp. 199-219.

tration is strongly disposed in favor of such legislation. The national nominating primary is supported by the arguments urged for the direct primary in the States, because the evils to be combatted are fundamentally the same. If the national convention is not to be superseded as a nominating body, its supporters must put forth decided efforts to meet the criticisms levelled at its unrepresentative character. It is not here contended that the national convention cannot be revised, in its organization, in such a way as to fully meet these criticisms. The immediate question rather is: Can this revision be accomplished from within the parties?

Before attacking the problem of a national nominating primary, it would be well to remember that during the last ten years more than a third of the States have passed laws whose object is to enable the party voters to express a direct preference among presidential candidates. The instruction of state delegations and the informal pledging of delegates to the interests of presidential candidates are practices which have long existed. The state legislation to be now described, incorporates the principle of delegate instruction in state laws.

Eighteen States have made provision in some form for a presidential preference vote or the election of pledged delegates, or both together. The degree of directness with which the preference is expressed and the measure of certainty of its being carried into effect vary considerably from State to State. One group of States provides for the direct election of delegates to the national convention, but either permits or requires that persons shall become candidates for the position of delegate under the aegis of some duly certified presidential aspirant. In the laws of California and South Dakota, which are alike in their general features, a number of candidates equal to the number of delegates to which the State is entitled, are permitted to file a nominating petition as a group, pledged to the interest of a given candidate for President. The names of the group members are placed on the ballot together and the voter may, by the use of one mark, cast his ballot for the entire group at once, as in voting for presidential electors. In South Dakota, as we have already

found, the candidates for delegate may file their names together under a title of not more than five words. The California law provides that before a group may be placed on the ballot, it must first appear that not less than one or more than three of the persons within the group reside in the same congressional district, and secondly, that the group has the endorsement of the presidential candidate whose cause it has espoused, or of a state organization which possesses his confidence. The States of Illinois, New Jersey, New Hampshire, and Ohio, in contrast to the States of California, and South Dakota, have adopted the congressional district as the unit for electing delegates. Thus, in the recent Illinois act, the candidate for delegate is required to file with his nomination petition a statement of his choice for President or the statement that he has no choice. On the official primary ballot there is printed beneath the name of each candidate the name of his presidential preference or the fact that he has none. The Ohio law differs from that of Illinois in two respects. It requires the candidate for delegate to file his first and second choices for President which will be printed beneath his name upon the ballot, but as an alternative, he may file the statement that he will, if elected, support the candidate for President who receives the majority of the preference votes. By the New Jersey law, the candidates for delegate or alternate may have their names printed together upon the ballot under the name of their candidate for President or they may have his name printed opposite theirs in a column headed "Choice for President." New Hampshire simply permits the candidates for delegate or delegate-at-large to pledge themselves, if elected, to vote for a given candidate for President in the national convention, as long as his name shall remain before the convention.

In a second group of States the voters are permitted to express a direct choice among the presidential candidates which may be made binding upon the delegates elected at the same time. In Oregon and Montana the delegates for the national convention are elected at large, but in order to secure minority representation, each voter is permitted to cast his ballot for one person only as delegate. Those candidates receiving the largest number of

votes, to the number of the delegates to which the State is entitled, are declared elected. At the same time a direct presidential preference vote is held and the candidates for delegate are bound by oath to abide by the people's choice. In Michigan the law declares that the candidate who receives a plurality of the preference votes of the State shall be considered the State party choice for President. In Pennsylvania and North Dakota the delegates are bound by the result of the preference vote which accompanies the delegate election. The laws of Massachusetts, Minnesota, Nebraska, Texas, and Wisconsin, do not make the result of the preference vote binding upon the delegates. Thus in these States whether delegates will be chosen who will be in sympathy with the expression of choice by the voters is a matter of uncertainty. On the official ballot in Iowa appear the names of candidates for President and Vice-President, party national committeemen, delegates-at-large, district delegates, and alternate delegates-at-large and district delegates. In addition, the voter is asked to answer yes or no to the following questions: "Shall the district delegates to the national convention be instructed by the vote of the State at large?" and "Shall the district delegates to the national convention be instructed by the vote of the congressional districts?" This is a recognition of the difficulty which ensues when the result of the state-wide preference and the result of the district delegate elections are opposed to each other.

The law of Maryland is the only one which combines a preference vote with an election of delegates by a state convention. In the state convention each county delegation must vote according to the instruction of the voters of that county as long as the candidate for whom they are instructed has the support of nine counties, the legislative districts of Baltimore being reckoned as counties. The presidential candidate who receives the votes of a majority of all the delegates becomes the choice of the state party and must be supported by the state delegation in the national convention.

Summarizing the above described state laws in as brief a manner as possible, we find that in four States, California, Illinois,

New Hampshire, and South Dakota, the choice for President is indicated only through the election of delegates; in twelve States, Iowa, Massachusetts, Maryland, Michigan, Minnesota, Montana, North Dakota, New Jersey, Ohio, Oregon, Pennsylvania, Texas, and Wisconsin, the choice is expressed through direct preference primaries; in eleven States, California, Illinois, Maryland, Michigan, Montana, North Dakota, New Jersey, Ohio, Pennsylvania, and Oregon, the choice thus expressed is made binding upon the delegates elected at the same time; in four States, California, Montana, Oregon, and South Dakota, the delegates are all elected at large; and in one State, Maryland, the delegates are elected by the state party conventions. Little attention need be given to the details of the presidential primary laws. A majority of them are mandatory and, as we have ascertained, in a majority the delegates are under obligation to abide by the voters' preference. As presidential primaries are held under the regular primary election laws of States, it is necessary for candidates for delegate to file nominating papers in order to have their names placed upon the ballot. In all save two States, candidates for the presidency are required, either personally, or through state organizations authorized by them, to file petitions signed by a certain percentage of their party supporters within the State. All except five of the States provide for the election of delegates in congressional districts, while the delegates-at-large are chosen by the voters directly in all of the States under consideration except Maryland and Illinois.

As a permanent and satisfactory method of arriving at a popular choice for presidential nominations, the state presidential primaries leave much to be desired. A general and thorough adoption of the principle of delegate instruction must be secured in order to produce a satisfactory result and this would make of the national conventions mere ratifying bodies like the electoral colleges. In so far as the practice of sending pledged delegates to the national conventions is not general it will be open to serious objection. A national convention composed of delegates of whom half are under instruction and half free to act at discretion can result in no satisfactory nomination for President; for, should

the candidate who is the choice of the instructed delegates be defeated by the votes of those who are not bound by instructions, the cry would immediately be raised, and with justification, that the convention had disregarded the will of the voters of the party.

The unstable character of some of the legislation upon this subject was revealed in the fierce factional contests of 1912. In Massachusetts where the district delegates and delegates-at-large are chosen by the voters, Mr. Taft secured a majority of the district delegates, but, on account of a tactical mistake of the Taft voters in dispersing their votes among a greater number of candidates than there were delegates to be elected, the Taft party lost the delegates-at-large. As the result of the state-wide preference vote was in favor of Mr. Taft, the delegates-at-large clearly belonged to him. In certain congressional districts the preference vote resulted in favor of Mr. Roosevelt, yet the delegates elected were adverse to his interest.

In Ohio peculiar situations arose in the primaries of both parties. The Ohio law at that time provided for the election of district delegates by the party voters and for the election of the delegates-at-large by the respective state conventions. A presidential preference vote could be held at the option of the party committee. In the Republican primaries a substantial majority of the delegates chosen were pledged to Mr. Roosevelt, but the supporters of Mr. Taft managed to secure just sufficient votes in the state convention to elect the six delegates-at-large. This result was obtained because delegations from certain counties which had elected Roosevelt delegates to the national convention, refused to consider themselves bound by that decision in voting for delegates-at-large, and acted according to their own predilections. No preference vote was held, but the vote for delegates showed a majority sentiment on the face of the returns for Mr. Roosevelt. In justice, therefore, the delegates-at-large should have been instructed for him. In accomplishing the object of electing delegates who would express the will of the voters, the Ohio law proved in this case to be inadequate.

The Democratic party in Ohio elected to hold a preference vote as a result of which Mr. Judson Harmon carried the State by

about 10,000 plurality. There were, however, some fourteen Wilson delegates elected, and it was stated by a prominent Ohio Democrat on the floor of the national convention that in certain congressional districts where the result of the preference vote favored Mr. Harmon, the delegates elected were pledged to Mr. Wilson. The Democratic state convention proved to be overwhelmingly for Mr. Harmon, and not only elected Harmon instructed delegates-at-large, but attempted, in accordance with the unit rule, to bind all of the district delegates to vote for Mr. Harmon as long as his name remained before the national convention. On the second day of the Democratic national convention, Mr. Robert L. Henry, of Texas, presented a minority report from the committee on rules, to the following effect: "Resolved, that in casting votes on a call of the States, the chair shall recognize and enforce a unit rule enacted by a state convention, except in such States as have, by mandatory statute, provided for the nomination and election of delegates and alternates to national political conventions in congressional districts and have not subjected delegates, so selected, to the authority of the state committee or convention of the party, in which case no such rule shall be held to apply."³ After prolonged discussion, this rule was adopted, and since the law of Ohio did not subject the district delegates to the authority of the state committee or convention, the action taken by the Ohio Democratic convention was in effect set aside.

In the Oregon primary of 1912, the Republican preference vote went in favor of Mr. Roosevelt but the majority of the delegates were sympathizers with Mr. Taft. As at an earlier date a Republican legislature in Oregon was obliged, under the senatorial preference law, to elect a Democrat as United States senator, so in the Republican national convention of 1912 the Taft delegates from Oregon were legally bound to cast their votes for Mr. Roosevelt as presidential nominee, but on every other vital question they assisted with their votes the cause of Mr. Taft.

³ *Proceedings, Democratic national convention* (1912), pp. 59-78.

The foregoing evidence warrants the conclusion that, in the States under consideration, the laws of 1912 did not make it certain either that the verdict of the voters in selecting delegates to the national convention would correspond to the result of the preference vote, or that the delegates-at-large would be bound to abide by the preference vote. It is doubtful, indeed, if such a result can be assured when the preference is given in the State at large and the delegates are elected by districts. In Ohio, for example, where, under the present law, each candidate for the position of delegate to the national convention must formally make known his first and second choices for the presidency and have the names of these choices printed in connection with his own upon the ballot, it is quite possible that the result may be the election of delegates, a majority of whom will be out of sympathy with the result of the state-wide preference vote. Definite and satisfactory results may be obtained either by the California method of electing one of two or more contesting groups of delegates who are each pledged to their presidential candidates, or by the Illinois plan, which provides that the delegates shall be elected in congressional districts and that each delegate shall be pledged in advance to the support of a given presidential candidate, whose name shall appear beneath his own upon the ballot. Here no state-wide preference vote is provided for, nor is one necessary. If the congressional district is to be adopted as the unit for the election of delegates to the national convention, it should also be the unit for the expression of a presidential preference. Likewise, if the State is to be the unit, the expression of the presidential preference should be state-wide. It will be found that the imperfections revealed in state presidential preference primary laws arise from the attempt to use the congressional district as the unit for one purpose and the State as the unit for another.

The election of delegates-at-large by state conventions or by the voters on a general ticket is liable to all the uncertainties just described. The supporters of a given presidential candidate who wins a round majority of the district delegates may find themselves entirely checkmated by a state convention, controlled

perhaps by the regular organization, with all the advantages which a regular organization usually possesses. A general vote of the State on delegates-at-large, introduces confusion by the use of two units for the election of delegates when only one is necessary, and is open to the objections urged above against a state-wide preference vote with election of delegates in districts. The delegates-at-large are in fact superfluous and should be abolished. A convention relieved of the delegate-at-large element might well be a more representative and a more independent body.

The capital objection to the state presidential primary laws is their diversity. Practical uniformity exists among the States in respect to the appointment of Electors. The same uniformity should obtain in the nomination of presidential candidates. State primary laws present many points of difference. Contrast for example the laws of California and Illinois. In the former all the delegates to the national convention are elected at large and the intention of the law is that the entire support of the delegates of the State shall be thrown to the presidential candidate who can muster the most votes. In the latter State, the delegates, excepting the delegates-at-large, which are chosen by the state convention, are elected in congressional districts and the state delegation may thus be more or less evenly divided among the candidates for President. Again, in certain states the laws may allow a more direct and definite expression of preference than in others. Indeed, as we have found from our survey of state laws upon this subject, the result in a State of the election of delegates may give extremely vague indications or none at all of the choice of the voters for President. In about two-thirds of the States, the laws do not contemplate any party plebiscite on the question of presidential candidates. In such States, in the absence of proper laws, the preferences of the voters for President can only be expressed by irregular and extra-legal methods. The soap-box primary, about which we heard so much in 1912, must be brought into requisition.

Yet another source of difference among the States lies in the nature of the direct primary laws, which govern in presidential

preference elections. In some States, what is known as the closed primary has been adopted. The intent of this type of primary laws is to sharply define party lines and oblige voters to identify themselves more or less permanently with one party or the other. The voter is generally obliged to participate in the primary of that party whose ticket he last supported at the polls, or the party in which he enrolled at the last registration, although the last election may have been of purely intra-state interest. As a result, any disposition of voters to keep their national and state politics separate is discouraged. In other States, however, the laws provide for open primaries, which admit voters to participation in primaries of whichever party they choose, irrespective of their previous allegiance. It was charged in 1912 that in one or two of such States, voters of one party voted designedly in the primary of the other in order to bring about a result favorable to the interests of their own party. It seems clear that the presidential primary should be a partisan primary, conducted without regard to state party affiliations. That the tests of party membership should differ so radically among the States, and that identification with a party in national affairs should be determined by criterions of purely intra-state interest are factors adverse to the success and usefulness of state presidential primary laws.

Assuming that state laws fail to satisfy the requirements of a direct presidential preference primary, is it possible to attain the same object through congressional legislation? The constitutional objection immediately arises. In Article II, Section 1, of the Constitution, occur these words: "Each State shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector." From this it appears that the Constitution leaves the mode of choosing the electors entirely to the determination of the state legislatures. Since the electoral colleges acting in their own discretion, were expected to choose the President and Vice-Presi-

dent, no reference is made in the Constitution to the nomination of candidates. The rise of political parties and the general introduction of the popular choice of electors have converted the presidential election into a direct election by the voters of the nation. Consequently, the formal nomination of party candidates prior to the time for the choosing of electors has become the rule. Is there any way by which the Constitution may be interpreted to accord with these facts? The Constitution, in numerous instances, has been extended to cover eventualities which the framers could not have foreseen. But in such instances, it has been possible to derive the necessary powers by reasonable implication from some power which is conferred in specific terms. In the present case, however, we can find no power conferred upon Congress from which can be derived the authority to pass a presidential nominating law, because in no place in the Constitution is the Congress granted any authority over the process of electing the President prior to the counting of the electoral votes, save that it may "determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States." In state courts the enactment of direct primary laws has generally been upheld as an exercise of the police power, but the Federal government possesses no inherent general police power. That which it does possess may be exercised only in pursuance of its definitely enumerated powers, and, as we have ascertained, there is no such grant of power to Congress concerning the choice of President, save in respect to the designation of the day for the choice of electors.

Furthermore, there is evidence of the most direct kind that the framers of the Constitution intended to exclude Congress, except in the last resort, from any participation in or influence upon the presidential election. Naturally, therefore, no power to legislate with respect to it was granted. The proposition to confer upon the national legislature the function of electing the President and Vice-President was successfully resisted because of the indispensable necessity recognized of keeping the executive independent of the legislative branch. For this reason, senators and

representatives are prohibited from serving as presidential electors and, should the election of President fall to the House of Representatives through the lack of a majority in the electoral colleges, the choice of the House is jealously limited to "the persons having the highest number not exceeding three on the list of those voted for as President." Charles Cotesworth Pinckney in a debate in the House over an electoral count bill in 1800 said: "I well remember it was the object to give to Congress no interference in or control over the election of the President."⁴ This should be the best of evidence, as Pinckney was a prominent member of the convention of 1787 which framed the Constitution.

It is not intended that the foregoing citations shall constitute any argument against conferring upon Congress by constitutional amendment the power to legislate upon the subject of presidential nomination. That Congress in passing a presidential primary act would be unduly controlling or interfering with the election of the President, no one will today aver. The conclusion is unavoidable, however, that the Constitution as it came from its framers affords no authority for the passage of such an act, and furthermore that there is no power specifically conferred from which the necessary authority can be derived. This being the state of the case, two courses of action are open: either to amend the Constitution, or if that should seem not at present feasible, to secure the enactment by state legislatures of a uniform presidential primary act. In conclusion a rough sketch of such an act is attempted in the form of a series of proposals.

I. A uniform presidential primary law should be complete in itself in order to obviate the necessity of reconciling its provisions with state laws in respect to registration, direct primaries, and general elections.

II. The proposed uniform law should accommodate itself to the mode of distribution and apportionment of delegates provided for by the rules of the two great party conventions.

III. For the election of delegates and the expression of presidential preference the congressional district should be adopted as the unit.

⁴ Quoted by Dougherty, *The electoral system of the United States*, p. 66.

IV. The name of each candidate for delegate should appear on the ballot with the name of the presidential candidate whom he is pledged to support, printed in connection with his own.

V. The delegates-at-large, should there be any, should be elected by the voters of the State at large subject to the conditions laid down in IV.

VI. Presidential primaries in all of the States should be held upon the same day, two or three weeks before the national conventions.

VII. A reasonable amount should be appropriated out of the state treasury to pay the expenses incurred by the delegates in attending the national conventions.

REFERENCES TO STATE PRESIDENTIAL PRIMARY LAWS

- California, Laws of, 1911, ch. 18.
- Illinois, Laws of, 1913, p. 310.
- Iowa, Laws of, 1913, p. 99.
- Maryland, Acts of, 1912, ch. 134.
- Massachusetts, Acts and Resolves, 1913, pp. 996-7.
- Michigan, Howell's Michigan Statutes, s. 562-7.
- Minnesota, Laws of, 1913, p. 654.
- Montana, Laws of, 1913, p. 590.
- Nebraska, Revised Statutes, 1913, s. 2145-6.
- New Hampshire, Acts of, 1913, p. 711.
- New Jersey, Laws of, 1913, ch. 183.
- North Dakota, Laws of, 1911, ch. 208.
- Ohio, Laws of, 1913, p. 478.
- Oregon, General Laws, 1911, pp. 20-21.
- Pennsylvania, Laws of, 1913, p. 719.
- South Dakota, Laws of, 1913, ch. 197.
- Texas, Vernon's Sayles' Texas Civil Statutes, 1914, Art. 3175a.
- Wisconsin, Laws of, 1911, ch. 300.

SCIENTIFIC MANAGEMENT OF THE PUBLIC BUSINESS¹

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The evolution of business organization is from the unsystematized through the systematized to the scientific. Governmental work—federal, state and municipal—is still almost exclusively in the unsystematized stage.

Among the causes of municipal inefficiency are the attempt to hamper and control the action of individuals by a multiplicity of petty restrictions unknown in private business, and the separation of the municipal service into scores of divisions with little or no mutuality of interest. Both of these practices tend to prevent group action in the large sense. But undoubtedly the greatest bar to efficiency is the unwillingness to trust the individual as shown by the attempt to thwart evil or selfish designs of the official by board control. This committee management is in my opinion, the most costly hallucination of democracy. As a present day cause of expensive and inefficient government, this bulwark of the stand patter, of special privilege, of the politician and of the crook makes other influences tending in the same direction such as the complacency of civil service and the lack of definite standards, seem almost negligible.

It requires some optimism to argue against committee management before an audience largely made up of representatives of the colleges. For in the college world the committee is largely looked upon as the guarantee of democracy, and is the principal safeguard against the encroachments of the dean, the department head and the president. I discussed this mechanism of management at some length in *Academic and Industrial Efficiency*, a report to the Carnegie Foundation. Bad as I consider com-

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

mittee control in our colleges, it is even more harmful in the conduct of cities, states and nations. The average man who sits on a college committee has some basis of fact for his action and his vote. On municipal committees the fact basis is usually missing. The fewer his facts the more eager is the committee member to vote. Owing to the standing given to it by the law, the majority vote of a governmental committee is given about as much weight when it is in line with the facts as when it is opposed by the facts. It is impossible for the people to select by vote those with the necessary fact equipment for any given task. This is not a pessimistic remark. It is only saying that a board of directors cannot intelligently vote on the details of a wage scale or the selling prices for a line of goods. These are questions to be determined by the administrative officials after a study of the facts.

Perhaps the most hopeful signs on the municipal horizon are the growing popularity of the commission form of government and the more recent appointment of city managers in a number of cities. By reducing the size of the legislative branch say to five members, the number of matters which it is humanly possible to consider is minimized. Then again the assignment of a large part of the administrative work to the individual member as is the practice of most commissions, does take a large part of the municipal activity entirely outside the field of the vote.

An appointive city manager holding office during good conduct and satisfactory service seems to still further build up the territory over which facts rather than votes and individual opinion determine action. It is probable that in most cities—all except the largest—the best commissioners for some years to come will be those who do not give up all their time to the city service. Without a city manager to relieve the commission of all the work that can be organized on a fact basis, no five men even in a moderate sized city could possibly cover the ground unless they are able to give up all their time to the work.

Two entirely different types of men are wanted as executives and as directors. Louis D. Brandeis speaking at the recent conference of American mayors in Philadelphia described the func-

tion of the board of directors and the administrative official as follows:

"Obviously the only justification for the director's existence is that he should direct; which means that he should be an absolutely fair and intelligent adviser and critic of the enterprise. The men who are in charge of an enterprise as executive officers are supposed to manage, and to possess the required energy and determination to go forward. But in a well equipped organization there should be men who will check up the manager's judgment and performance. Only in this way can continued prosperity be assured.

"For the proper exercise of the functions of the director, it is essential that he be disinterested; that is, be free from any conflicting interest. But it is also essential that he have knowledge. Facts, facts, facts, are the only basis on which he can properly exercise his judgment. It is as necessary that he know intimately the facts concerning the business, as that he have only one interest to subserve. Now, no man can have such detailed knowledge of the facts of many enterprises. This is due to the limitations of time and place and to those other limits set by nature upon human intelligence."

The application of these principles to the control of the affairs of a city would appear to be that the legislative body—whether a commission in form or not should confine its attention to large matters and questions of general policy and avoid wherever possible taking up details. The truth of the matter is that most municipal governing boards are so loaded up with details—many of them urgent—that time does not afford for the discussion of large questions of policy—especially those with a long look ahead. Anything that can wait does wait. The next generation always has difficulty in getting its claims heard.

The next requirement for a city ready to take up seriously the question of scientific management would appear to be a modern charter involving the largest measure of home rule and the smallest number of state-imposed checks. In the case of my own city even reasonably efficient government cannot be brought about until by state enactment the city and county of Philadel-

phia is given authority to consolidate or do away with unnecessary offices and to readjust and keep on readjusting the relations of those that are left. In other words we have outgrown the idea that an industrial or governmental organization can remain to all intents and purposes unchanged during a term of years. If there is to be progress there must be a constant reforming of its lines to meet new conditions and in order to undertake the new work of an advancing civilization.

We need to be constantly reminded that the machinery of government is not the object of government. The first question to be asked in the process of properly organizing an industry is "What is the product—what are you trying to make?" In the case of a municipality the budget, methods of road building, and even the educational system are not the products, but the means to it. The well-being of all the people is the product and nothing short of this. If we see the future aright the electorate is going to demand that this well-being be promoted and safeguarded by agencies—educational, recreational, even spiritual—that are not now dreamed of as essential to the conduct of city, state and nation.

The economic fact which is going to force good municipal government—even scientific management in city affairs—is the growing cost of the undertaking. As our population gathers in larger and larger urban units, and as the population demands that we shall perform collectively functions which formerly when performed were performed by individuals, the expenses of operating and maintaining a city grow by leaps and bounds. The complexity of governmental action increases even more rapidly than does the size of the field over which it operates. It is only because we do not have the figures which represent the difficulty of the task ahead of us that we are not appalled by it.

No discussion of the causes that make for efficiency and inefficiency in our municipalities would be complete that does not mention the public service corporations. That they have lain for a generation like a cancerous growth at the very heart of this problem in practically every American city is only too true. That our people have decided that they are to be controlled—

regulated if you like—seems certain. The weakness of the situation is that for the most part the men who really control these properties are either unable to see any other viewpoint than their own, or are fearful to throw the cards on the table. This situation is fraught with danger. For the average American city to launch forth on an extensive program of municipal operation at this time would appear to be diverting into new fields energies already burdened to the breaking point. My own feeling is that whenever approximately fair treatment in rates and service can be secured from a public service corporation a city would be well advised if it refused—certainly to operate, possibly even to take over the ownership—of utilities not already so owned or operated. Ultimate universal public ownership and probably universal public operation of all municipal utilities seems as sure as anything can be. But the further study of the municipal activities now carried on is a task amply large for most of our cities. Of course if a public utility company refuses to be honest or frank or efficient or accommodating, no self-respecting community will halt a moment in meeting any new responsibility which such a condition may impose. There is no middle course between thoroughly satisfactory operation of a utility by some one else and operating it yourself.

The statement for municipal ownership and operation could be made much stronger than this. There is absolutely nothing in the municipal situation which necessarily implies that private operation can produce lower rates or better service. My thought is only that the field of civic activities being overwhelmingly big, we on the public side should seek to develop what we have under our care rather than add to it in any way that can be avoided. It may be added that private companies, both utility and industrial, are in the same position as far as the possibilities of progress in method are concerned.

It has been a generation since we heard the first rumble of the artillery in the battle for an intelligent and intelligible budget. Even so we have not yet heard—so far as I know—a single word about probably the most important phase of the subject, i.e., the effect of the budget upon cost keeping. This of course re-

minds us that cost keeping, a most important phase of the work of most industrial establishments, has not even started as a feature of our governmental activities.

Permanency of progress has usually come about through wide dissemination. In other words a change in type is not likely to endure unless a large number of individuals have been affected. Usually also the individuals affected must be widely distributed if the change is to be permanent. Put in a different way, the permanency of any change affecting a type is proportional to the number of individuals upon whom the change has been made effective and the breadth of their distribution.

In the minds of those interested in effecting changes in governmental agencies the conditions which bring about permanency are almost always confused with the causes which bring about progress. We find the same thing true in the industrial world. Most people consider that progress can only be brought about through moving the mass. Those familiar with the scientific management movement have been impressed with the way in which during the last generation the work of half a dozen manufacturing establishments, none of them very large, has fundamentally affected industrial methods all over the world. Taylor's work principally at Midvale, Bethlehem and at two or three other places has resulted in giving birth to what appears to some of us to be the greatest single force operating in the industrial world today. The same result can be brought about in municipal administration. What the problem needs is intensive study and intensive development at a few points with proper publicity.

If, for instance, there could be found one city of say 100,000 population where the electorate would allow itself to be guided in such a study for a period of say five years—preferably ten—it would do more to put municipal administration in this country on a scientific basis than could be accomplished by the usual methods of reform operating in a thousand communities.

The point I want to make is this—that the improvements brought about through the routine operation of honest, unsystematized management, working through two generations in a

large number of cities would be meager as compared with what might be accomplished in a few years through more intensive application of science in management at a few points—perhaps in a single city.

The securing of permanency for the results so obtained is an entirely different problem. However, to secure permanency for good results, especially in government, and especially in this country, is a much easier problem than it has ever been before.

The principles of scientific management are the same whether considered in their application to an industry or to a governmental unit.

First. *The development of a science for each element of the work.* Among the varied activities of a city there is the opportunity for literally thousands of such independent inquiries, each resulting in the assembly of data and the development of laws as varied and comprehensive as can be found in any other field.

Second. *The selection and training of employees.* Surely no one will claim that in the hit and miss present day method, largely dominated as it is by politics, can be discovered even the basis of a scientific system of choosing and developing a staff.

Third. *The bringing together of the science and the properly selected and trained employee.* All our governmental work is now done under a minimum of supervision and control, and until this can be amplified and standardized the work will continue to be carried on in a wasteful manner.

Fourth. *A revision of the responsibility as between the management and the men.* Notwithstanding the responsibility supposed to rest with those holding the higher positions, they assume a far smaller proportion of the actual responsibility than they should. True in the industrial world, it is even more general in government work because of the shifting brought about by changes in administration.

The foregoing is a brief statement of the whole theory of scientific management. That these principles—enunciated by Taylor—can be applied to city work as they have been applied to scores of different kinds of industrial work is to me only too

obvious. It opens up a field of endeavor which staggers the imagination.

Perhaps the statement is warranted that almost every mechanism we have in our public works departments today will be superseded within a comparatively few years. The same is true as to processes and methods of doing work. Nothing has been so sufficiently studied as to have reached even an approximately scientific standard. All that can be said is that we have started on the long road. Taylor took twenty-six years to study those laws of cutting metals which were finally reduced to a slide rule which answers questions as to feed and speed. Examine the mechanisms in use for cleaning streets in even Washington, D. C., the cleanest city in the United States. Look at the surface of the streets we clean. Study the attitude of the public which overloads its dump carts, brushes store and sidewalk sweepings into the street and tolerates the open waste can. Continue your observations in such matters as snow and garbage removal, the elimination of insect pests, the regulation of utilities, the building of roads and highways, the distribution of water, our municipal music and our recreational methods and a thousand and one other activities. You will then not question that science in the management of our cities and states and of the nation itself is only knocking at the door. Some of us think we hear in certain quarters an invitation for her to cross the threshold.

CITY MANAGER PLAN IN OHIO¹

L. D. UPSON

Director, Dayton Bureau of Municipal Research

City manager government will soon be in effect over some 250,000 people living in eighteen cities. One hundred seventy five thousand of these people live in Dayton and Springfield—cities which are now completing their first year under this type of administration. Any deductions to be made regarding this type of government as it operates in the case of larger communities, must be drawn from the experience of these two municipalities over the past year.

A most common test of the character of government is economy, although that is no fairer criterion of worth than it is with shoes, furniture, or tobacco. Cheap government is not necessarily good government. Even were the revenue and expense schedules for the present year available, it would be difficult to make an impartial analysis and comparison of finances in Dayton and Springfield under the two types of government. In Springfield the most concrete evidence of economy has been the reduction of the floating indebtedness from \$100,000 to \$40,000, although the resources were slightly less than those of former years. In Dayton the net expenditures for 1914 from ordinary sources will be approximately \$78,000 more than for the previous year. However, with this increase the general revenues were charged for street repair, street lighting, and emergency health work, formerly costing a much larger amount from bonds.

It must also be recalled the old government of this city for a period of six years past had operated with an average annual deficit of \$60,000, all but \$125,000 of which had been funded in long term securities. The issue of nearly \$1,000,000 in flood

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

emergency bonds in 1913, and the operation of several departments from this revenue for a number of months enabled the previous administration to reduce this liability by \$43,000 without actual economies. These facts are stated only to indicate that the unusual conditions in 1913 render a comparison of expenditures between the last year of the old and the first year of the new government somewhat difficult, if not actually unfair.

A study of the tax rates is futile. For 1915 the total rate has been reduced in both cities, in Dayton it being \$13.60 per \$1000 of valuation as opposed to \$14.40 in 1914. This decrease in rate is indicative of nothing so far as economy is concerned, as the increase in taxable property will produce \$100,000 revenue additional. This increase in revenue and decrease in rate, however, was secured only by reducing the actual needs of the sinking fund by \$75,000. This action would appear deplorable, yet if the enormous increase in debt service, brought about by the careless issue of bonds is taken into consideration, it is perhaps justified.

Until more complete and accurate data are made available by the closing of the books for the present year, only these financial facts remain:

In Springfield the new government has been more economical, and naturally reduced the floating debt; in Dayton the administration had more money than its predecessors; did not materially reduce the floating debt, and did not operate at the usual deficit; did pay from current revenues, in excess of the increase for the year, expenses formerly paid from bonds. Financial criticism must therefore be disregarded, and the success of these two administrations be judged properly from their actual accomplishments.

CITY BUDGET

Probably the care in the preparation of the city budget is most significant in indicating the attention which is given to the financial problems of a municipality. The charter of Dayton is one of the few which provide in detail how the budget shall be made, and these sections appear almost verbatim in the Spring-

field document. In this latter city, however, there was not time to conform to this plan and the model authorized by the State prevailed. Dayton has endeavored to formulate an appropriation ordinance along the most modern lines and for 1915 is making changes which will bring even more improvement. Funds are appropriated to the main functions of the city government under different heads—that is, personal service, contractual service, sundry charges, supplies, materials, and equipment. Each one of these main divisions is again subdivided and entered in the accountant's book, but this further allotment is subject to change by order of the city manager. This secures all the advantages of a detailed budget yet eliminates the necessity of frequent transfers by ordinance. Introducing such a document into a city operating under a radically different system and where comparative data were lacking necessarily created some friction. There have been many transfers, and vouchers have been charged to improper codes. These results would have followed in any city making a similar change. The advantages have come from careful estimates which allowed a larger program of work on limited funds, and which permitted, without serious handicap, the reductions brought about by unexpected curtailment of revenues. In budget making and budget publicity, Dayton and Springfield compare favorably with some ten or a dozen of the most progressive cities.

ACCOUNTING METHODS

Both Springfield and Dayton have accounting systems equally advanced and which are duplicated by few. In neither city has the installation been completed but they are sufficiently under way to measure results. In place of a record of cash receipts and cash expenditures suitable to a cross roads grocery, and which prevails in practically every municipality, these two cities have made possible a balance sheet, supported by distinct schedules for each public utility and industry owned; provide an adequate control over permanent property, equipment and stores; and have definite knowledge of accounts receivable and of liabilities in-

curred, so that no revenues may escape collection, nor appropriations and allotments be overdrawn. Adequate centralized accounting has in Dayton insured the payments of several thousand dollars of revenue formerly lost; made overdrafts impossible; discovered errors of over two hundred thousand dollars in sinking fund calculations; makes all disbursements by check; and controls the cost records installed over street repair, street cleaning; garbage and ash removal, etc.

It is in the purchasing of supplies that the most notable savings have been made and which will amount to more than \$33,000 on an expenditure of \$200,000. A department may not purchase until its requisition has been approved by the manager, and the purchasing agent does not order until he is assured by the accounting division that appropriated funds are available and have been properly encumbered therefor. Prices are 10 per cent to 90 per cent less than those formerly paid. Bills are discounted at 2 per cent for payment within ten days after the first of the month following. Recognizing that prices fluctuate, larger savings taken at random are: printed matter, \$1000; cylinder oil, \$1000; coal, \$400; meat, \$560; fire hose, \$16,000, etc. Similar savings, which have gone into increased services, are reported from Springfield. A beginning on the standardization of supplies and materials has been made in Dayton.

PUBLIC WORKS

In the department of public works, both cities under discussion have made notable progress, possibly because the city managers are men of engineering training. It would be anticipated that their primary attention would be given to this branch of city government rather than to other features. In Springfield the manager reports a reduction in engineering cost from something over \$10,000 in 1913, to \$6700 in 1914, and speaks of improvements costing nearly \$600,000. In Ohio however, engineering costs are usually charged to bond issues, so these figures are not particularly impressive.

It is more essential to know that by economies they were able

to double the amount of money expended for street repair. In street cleaning and garbage removal an analysis of the figures of 1913 and 1914 shows a saving of over 25 per cent with a large increase of service.

In Dayton the extension of service has been notable. Inspection of public contract work has been completely reorganized and contractors rigidly required to conform to specifications; street repairs are being made entirely from public revenues with the exception of a balance from bonds issued in former years; there is almost double the amount of street cleaning; streets in the business section are flushed for the first time in the history of the city; collection of rubbish and ashes has been resumed after a year of lapse and made efficient; and reasonably adequate garbage collection is to be had for the first time in ten years. In the division of water every effort has been made to secure a supply more nearly equal to the demand. Pumping machinery has been overhauled, leaks investigated; pressure increased; and in the face of increased pumpage there has been a decrease in the amount of coal burned. A municipal garage has been established; all cars labeled; their use placed under control; and record of costs installed.

This discussion of public work improvements leads to the necessity of a program for the future. The principal weakness of public construction in Dayton has been the absence of a plan which could be adhered to over a long period—feeder sewers run into sewers of smaller dimensions; and water pipes and fire plugs have been placed without regard to the anticipated growth of the community. These are, however, uniform defects of local government. However, in Dayton a conscientious effort has been made to outline work in many directions. The water plans which have been recently completed will cover sixteen years of construction; a sewer survey costing \$30,000 is under way; a comprehensive study of public waste disposal has been made; an investigation of adult delinquency is being completed, and upon its findings will be based the future correctional policies of the municipality. The administration may change, and the present appointed executives make way for others, but their successors

will have a definite plan for public construction which they must follow or set aside only after consideration. They will not be required to go ahead on guess work, or on plans of only one or two years anticipated duration.

PUBLIC WELFARE

Both Dayton and Springfield have definitely provided in their charters for a department of public welfare which shall direct activities having to do with the social and moral conditions of the citizen—health, charities, recreation, corrections, etc. I cannot speak of the success of this department in Springfield except to say that they have secured a full time health officer and that the work of this division has been largely increased.

In Dayton civic progress through the welfare department has been extraordinary and the administration may lean most heavily for support upon the results secured. The health division was studied and reorganized. In addition the nursing of the Visiting Nurses Association and of the Tuberculosis Society has been brought under city management. This single control of public nursing has resulted in an infant death rate from 40 per cent to 50 per cent lower than that in three years previous. The removal of insanitary conditions; the regulation of vacant property; a more careful inspection of dairies and places where food products are sold; the stringent regulation of quarantine; and the inspection of school children which have been exposed to contagion lessened morbidity and has reduced the death rate by two points in a thousand, the equivalent of some two hundred and fifty lives. This is notable, and I know of nothing of which the administration in Dayton may be prouder than the fifty-five babies' lives which have been saved.

The facilities for public recreation have been extended far beyond those formerly prevailing. A self supporting public bathing beach has been opened, in connection with which next year, there will be operated a municipal dance hall and restaurant. Seventy-five families cultivated community gardens last summer; there were twenty-two experimental gardens for hun-

dreds of school children under the supervision of an expert gardener; and nearly three hundred vacant lots were prepared as gardens. The number of play grounds under public supervision has been doubled, and new equipment secured until there are now thirty-five play centers for young people.

In the treatment of adult delinquents, new policies are being tried—the moral effect of clean clothing and plenty of baths has been combined with outdoor labor which would otherwise have gone undone. In frequent cases men and women have been placed on probation and jobs secured for them. A municipal lodging house has been established where a half day's labor is exacted for a night's lodging with meals. A free legal aid bureau has been established for those who are too poor to secure private counsel. This division at a cost of \$625 has handled over seven hundred applications for services. The city's prosecutor on the other hand has done commendable work in settling family quarrels and back fence squabbles without appeal to the law.

In this paper it has been endeavored to show that the cost of government in Dayton and Springfield has not been excessive, nor has it materially increased when compared with the expenditures in previous years under other types of administration. Also that the results achieved have marched far beyond those in the great majority of municipalities. Compared with local conditions which formerly prevailed this progress has been even more striking. There has been criticism but happily much of it has come from men who are more interested in jobs and profits than in efficient and democratic local government. No little of this complaint has been born of prejudice against an administrator who came from another city.

It would perhaps be well had some means been secured for having all of these criticizing elements represented in the city commission where they might themselves have gone on record on the propositions about which they now complain. It will be interesting to note the effect of proportional representation upon this type of government, and experience in Dayton at least seems to indicate that its introduction would be of no small benefit. Our government is democratic; has awakened wider public in-

terest than ever before; is economical and efficient, but would be strengthened had it the support of definitely minded groups behind it.

Frankly, this discussion is by one who is prejudiced in the belief that the city manager plan is in theory fundamentally sound, and destined to solve in a limited measure our municipal problems. Applying such recognized tests of adequate local government as are available to a bureau of municipal research, I am convinced that Dayton and Springfield have secured governmental results equaled by very few municipalities in America.

SOME REFLECTIONS ON THE CITY MANAGER PLAN OF GOVERNMENT¹

HERMAN G. JAMES

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Mr. Upson has shown us very clearly what has been accomplished in practice under the city manager plan in Dayton. There are, however, some considerations in connection with the theory of the city manager plan which are worthy of attention, and I am glad that Professor Hatton touched upon the theory side in his remarks.

I am an enthusiastic advocate of the city manager plan and we have several cities in Texas operating under that form and others now considering its adoption, largely as a result of the support given to the plan by our bureau of municipal research and reference. At the same time, I am not without some very grave misgivings as to how the plan will work out in practice because of the all important question of the kind of men who will be chosen for these places.

Of course it is apparent that the men chosen must be chosen for their expert qualifications and not for political reasons. That is axiomatic. But it is to my mind almost equally important that the proper kind of qualifications be insisted upon. It is not enough that the city manager be a first class business man or manager in the ordinary sense. If he is no more than that I confess I do not look forward to much advance in municipal ideals and accomplishments under this new plan. He must indeed have the above qualifications if he is to succeed as manager. But more than that he must be a man of liberal training, broad point of view and a comprehensive conception of the real problems of urban life.

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

For that reason, I have advocated calling him mayor instead of business manager or city manager, for I hope that the office will be filled by men of the training and type of the German burgomaster rather than of the type of our successful American business men and managers. For the same reason, also, I feel it to be unfortunate that almost all of the city managers so far chosen are engineers. It is true that for smaller cities there are very important considerations of economy in favor of appointing an engineer to the position. For most of the work of a small city consists in work of an engineering character and the salary of a city engineer can be saved by appointing an engineer to the post of city manager. But the same reason does not apply in the case of larger cities where the general supervisory duties of the city manager would occupy his time to such an extent that he could not himself take immediate charge of any one department. In such cities the prime considerations in choosing the city manager should be those enumerated above, and those qualifications are certainly by no means found exclusively or even preponderatingly among men in the engineering profession.

Now that leads me to consider another point touched upon here in the discussion, namely the danger of giving too much prominence to the city manager as a factor in government and so inevitably making him a political issue. He should certainly remain in the background as far as the public is concerned, but within the city government he must be accorded by the representative body much the same position that is accorded to the president of the university by the regents or to the superintendent of schools by the board of education. In no other way it seems to me can the greatest possibilities of the new plan come to fruition.

There remains one important point to be touched upon in this connection, and that is the question of where and how cities are to find managers of the high order described above. If our universities were doing their duty we could say, look to graduates of the universities trained with this in view. But unfortunately our universities are not doing their duty in this regard, and though a feeble beginning has been made here and there,

it is to be feared that the movement for the city manager, with all that it promises will eventually fail, not because our cities are unwilling to try it, not because the plan itself is not a good one, but because our institutions of higher learning have failed to grasp the opportunity within their reach for conferring a lasting good on our American municipalities.

COURT ORGANIZATION FOR A METROPOLITAN DISTRICT¹

HERBERT HARLEY

Chicago

The idea of a unified and responsible court for a metropolitan district must not be looked upon as a competitor of the idea of a unified state court system; it is instead an elaboration of the state system intended to meet extraordinary conditions. The needs and conditions of administration in the great modern city are so different from those in rural districts that a system of courts applicable to a State which is wholly rural must necessarily be elaborated to adapt it to a State which has such a metropolitan center. In many cities the present situation is so desperate that it is plausible to hold that reorganization will come first in those cities and later in the States in which they are located.

In either case there will be no serious difficulty in adjusting the local court to the state system. And though we speak of it as a local court it is of course but the local agency for the exercise of a state function. The large city usually has suburbs which should not be excluded from the benefits of reorganization. The metropolitan judicial district may then be presumed to include the city, its suburbs, and such other territory as may be conveniently administered from the local center. In most instances this would mean the county in which the large city is located.

It is not clear how large a population is required to rate in our formula as a metropolitan district. A county containing 100,000 people with a total of five or six judges, exclusive of lay magistrates, could doubtless be well administered under the general state system. One twice as populous would put too great a

¹ A paper read at the eleventh annual meeting of the American Political Science Association.

strain upon the comparatively loose structure designed for the average county. There appears to be a neutral zone between counties of 100,000 and 150,000, between those having a force of four or five judges and those having eight or ten, and to say in advance which system would serve best, having regard for economies and accomplishments as yet hardly conceived, would be presumptuous. Both forms must be tried out in competition for a number of years before positive statements can be made. The answer may come in an organization more elaborate than that of the typical county and less formal and autonomous than the scheme which I shall present as specially suited to cities of 200,000 or more. We had in 1910 twenty-eight such cities with a combined population of 17,000,000 and a reference to the population by counties would probably add to this list.

With this understanding as to the nature of the metropolitan district and its place in the general state scheme, we will proceed to the features of organization which are found necessary by experience or which appeal to our judgment as consistent with the best theories of administration. A first consideration is as to whether the judges of the metropolitan court are to be of more than one grade with respect to judicial power. At the present time our court system, in both city and country, is a judicial hierarchy. The existence of several grades of judicial officer appears necessary in rural districts from the nature of the administrative problem. The judicial hierarchy persists in the city because the city is only a grown-up town and there has never been a comprehensive reconstruction. It is defended on the ground that there are numerous causes of relatively little importance which do not require a high degree of skill and training, and there is economy in maintaining for these causes a class of inferior judges at a lower salary. The opposing reasons may be stated briefly as follows:

1. In the first place there should be no rigid division of the judicial force, as must follow the creation of an inferior class of judges, because in a court in which the economies of specialization are fully utilized, the entire body of judges should be available when a selection is made for any one of numerous technical

branches. Otherwise the right man and the right field of work cannot be brought together.

2. A large share of the matters classed as legally unimportant are socially of the greatest significance, if not singly, then when multiplied by the thousand. In the criminal field the vital importance of the lower branch is clearly seen. If the first screening is done effectually society will have fewer notable offenses to contend with in the higher court. In the light of practical psychology, but recently turned upon our criminal courts, who can say that the magistrate who does the first winnowing is not as important an official and entitled to as high salary as the judge who presides over the jury trial in cases of felony?

3. The so-called petty civil causes are not at all petty from the standpoint of a large share of the people for whom the court exists. The litigants involved are as much entitled to say whether their causes are petty as anybody. The fact is that there are very few if any causes which can safely be called petty and nobody can say in which actions the potential significance will develop. All deserve to be treated seriously.

4. Because judges who can handle these commoner causes with tact and good sense are not plentiful, and because such work is frequently a severe drain on nerve power, it is unfair to the incumbent and prejudicial to the service to make the salary depend upon the extent of jurisdiction exercised by the judge. Differences in salary had better depend upon length of service.

5. There is no proof that cheaper judges for certain popular courts would effect any saving. All of our present experience points to the opposite conclusion. Economy lies in getting a right and lasting adjudication in the first instance and this requires exceptional men.

For these reasons it seems unavoidable that we should decide in favor of equal judicial power for all the judges of the model metropolitan court. In merging all the courts of a given district and taking temporarily the judges already in service, it may, however, be a practical necessity to make two classes of judges. As a tactical concession this can be done by having a junior class of judges in which the present inferior class of judges will be

placed, but these juniors should be given just as wide judicial power as the senior judges. The distinction can be preserved by making only senior judges eligible to the judicial council, or governing board, and to the office of presiding justice of a division of the court. If a difference in salary must also be conceded this should be looked upon as a sop to tradition and prejudice.

Having then a body of judges of equal jurisdiction we proceed to consideration of the divisions which are to be created for administrative purposes. The divisions arise from the diverse nature of the service to be rendered. They may be of two sorts; those specified by the statutes, and those created subsequently by the court under power conferred by the act. These latter can be altered or abolished without legislative action on short notice.

It is clear that the larger the district is, and the more numerous the force of judges, the greater will be the opportunity for specializing. With a force of ten or twelve judges there could hardly be more than three or four main divisions. With a force of forty or fifty there could be as many divisions, and sub-divisions, or branches, as the service required, but a limit would be imposed by the need for avoiding too narrow a range of employment for the individual judge, who should have a field of work small enough to permit of mastery of the law and yet large enough to encourage mental growth.

The most natural division of work is between civil and criminal. There must be a criminal division. In even the smaller cities some specialization within the criminal field is necessary. This should be provided by subdividing the criminal division into as many branches as may be required. There should be no statutory separation of the criminal business into two divisions, each with a presiding justice, for this would divide responsibility for the enforcement of criminal law, which is the curse of practically all our city courts today. Let one man be responsible for the administration of criminal law in all branches.

The civil causes divide naturally into those which involve the extraordinary remedies of equity, for which the chancery divi-

sion will be created, and the two classes of common law causes which are tried with and without juries. There are left then the probate matters, divorce cases, and certain quasi-criminal causes, to which may be added advantageously criminal actions against husbands and juvenile offenders. As these matters all relate to the family they justify the creation of a division to be known as the probate and domestic relations division.

We have then the following five divisions: chancery, probate and domestic relations, civil jury, civil non-jury, and criminal. An anomaly may be presented by a metropolitan district in which there is located at the time of the reorganization a localized intermediate court of appeal. Unification points to the need for merging the jurisdiction of the intermediate appellate court and continuing its powers as a division of the new court. This may make a sixth division.

A chief justice can superintend six divisions. The public can become familiar with these parts but might not avoid confusion if there were many more. Probably in even the largest cities further specialization should be accomplished by subdividing these divisions as may from time to time appear convenient.

The large powers for self-government which such a court must possess are to be exercised through a representative body of convenient size which is best known as the judicial council. The council is naturally made up of the presiding justices of the several divisions. This gives every main division a representative in the council. It permits a full view of all the activities of the entire court whenever the council is in session. The addition of an executive head of the council, who will probably be called the chief justice, completes the simple organization.

It is presumed that the statute has given to the metropolitan court large powers for establishing and amending procedural rules. This question has been pretty thoroughly threshed out in recent years and the profession stands committed to it almost universally. There will never be responsible administration of justice as long as wayward and incompetent legislatures lay down a tangle of procedural law, minute, mandatory, inconsistent, tying the hands of judges, exalting the record, and turning the

energy of trial and appellate courts from a consideration of ends to one of means. There will also be in such a court a body of orders relating to the internal affairs of the court, which must be adopted by the council and enforced by the chief justice.

It is evident then that the power which selects the presiding justices of divisions is ultimately the power which dominates the judicial council. Nobody is so well qualified for the very important work of appointing the presiding justices as the chief justice. A judicial council made up by any force in opposition to the chief justice might easily negative his power, split up the responsibility, and bring the machine to a stand-still so far as an administrative policy is concerned.

The power of appointment to the office of presiding justice, on the other hand, gives the chief justice the preponderating power necessary to locate responsibility. But to prevent arbitrary interference by an inexperienced chief justice it seems well to provide that a judge appointed to the office of presiding justice shall hold that place with an *ex officio* position on the judicial council for a definite period equal to the term of the chief justice. This would result in the gradual making over of the judicial council. A new chief justice, with power at some future time to exchange several places in the council, would exert an influence on the short term members. His hold on his new appointees, on the other hand, would not be absolute, for they would be beyond removal by him. A nice poise is thus obtained.

Places in the respective divisions must be filled by assignment by the chief justice. This affords expert choice of work for every judge by the responsible head of the court. There is need for a reasonable guarantee to each judge that he will not be arbitrarily switched from one field to another, thus forfeiting his special experience. To this end it should be provided that tenure in a division should be permanent except that the chief justice can reassign to a vacancy arising in another division, or make an interchange of judges between divisions, by securing the consent of the presiding justice of each division from which a judge is taken. But to permit of utilizing the entire force to advantage in meeting emergencies the chief justice should have power to make

temporary assignments, not exceeding six months, at will, and to require any associate judge not occupied in his regular work to take part in the sittings of any other division. This makes the entire force fluid but protects the associate and presiding justices from abuse of the power to shift units.

Argument against an inferior class of judges to serve at a lower salary has been submitted. There are certain duties, however, more administrative than judicial, which can properly be performed by an official of lower salary under the direction of a judge. To meet this need the act should provide for a certain number of masters, and fix their compensation. The powers which they shall exercise should be determined by the judicial council. Genuine judicial talent is too rare and too valuable to be permitted to wear itself out on details which can as well be done by an assistant. Masters may become highly expert, and as long as they are directed, may prove economical from more than the mere financial standpoint.

The act will also create a single clerk's office and provide for appointment of a clerk by the judicial council. Branch clerk's offices will be created as needed by the council and the clerk will appoint deputies from a list of eligibles made up according to civil service rules to be adopted by the council. The chief justice should have power to make rules respecting the appointment, removal, and duties of persons to keep order in the various branches of the court. The jury commissioners should also be brought under the appointive powers of the chief justice and given a definite term of service.

Expertness in judicial work implies long tenure. The kind of judges who will be attracted to the service once it is coördinate and efficient will be men seeking a career on the bench. Whatever their express terms of service their ultimate service will be long. It will be appropriate to provide for a retirement pension, the terms of which will depend in great measure upon the nature of their tenure, which is not part of our present subject.

There are two features of an organized court which immediately command attention. One is the matter of meetings of judges, and the other statistics and publicity. The statute should provide for meetings of the judges of divisions as often

as once a month, and for a meeting of all the judges at least once a year. If the court be comparatively small, say from ten to twenty in number, general meetings should be held monthly.

At the annual meeting the chief justice will present his report, containing complete statistics regarding the business done by the several divisions of the court and the present state of the dockets. The statistics will be collected under the following detailed heads: litigation, efficiency of personnel, social, criminal, and financial. The report will also be published and given a circulation at least as wide as the entire local bar.

From these meetings and statistics come cohesion, discipline, inspiration. Without organization these tremendous forces are left untapped. The meetings quickly develop an *esprit de corps* which is worth more than five hundred sections of the code of civil procedure. The judges of the court immediately realize that they are tied together, that they will sink or swim according as the entire court fails or succeeds in public esteem. Every judge becomes jealous necessarily for the reputation of the court and solicitous for the success of every member. Team work is inevitable. Discipline directly by the chief justice or judicial council is almost obviated by the mere discussion of the affairs of the court in open meetings. The ideals and the conscience of the more sensitive speedily become the ideals and the conscience of the entire court.

The statistics have enormous subjective force. Year by year the judges of such a court strive, not merely to retain public confidence, but to set fresh marks of accomplishment. The statistics flood every little corner of the court system with the wholesome light of publicity. On the objective side the close analysis of the court's work, presented by the published report, will possess a value we are hardly able now, in the absence of experience, to estimate. Our criminal and social legislation today is based too much on guesswork. It can never have the needed foundation of fact until our courts, now going their irresponsible and careless way, become self-conscious and self-revealing.

An organized court thus put on its mettle will invent methods of accomplishing its work more speedily, more economically, and more humanly than we can now conceive. One of its business

inventions will be a stenographic bureau so that litigants will not be bled in costs as at present. The municipal court of Chicago, which has blazed a way into this great socio-judicial field of the future, gives us promise of what may become in time universal. This court illustrates the necessity for the segregation of causes in its speeders' court, where all those who offend the traffic laws are handled in a consistent manner. In the first sixty days of its existence this branch court collected \$10,000 in fines and enforced respect for necessary rules. The great Chicago morals court was established by Chief Justice Olson on this same theory of segregating causes and fixing responsibility on a single judge. The morals court has not abolished vice, but it has thrown more light on it than ever before in any city since there first was a vice problem, and has got under way remedial forces which will inevitably save all that can be saved from the social wreckage.

Next came the boys' court, the place where all offenders between the ages of seventeen and twenty-one, whatever the charge against them, are rounded up. The age of adolescence is the dangerous age in the city. Now that it has been done, anybody and everybody can see that a boys' court is even more essential than a juvenile court. It stops youth at the threshold of a life of crime.

One of the unsolved problems in this country has been that of trying civil causes involving small amounts at an expense which the traffic can bear. We have tried every sort of way except that of getting a really able judge and telling him to go ahead and do as he pleases. These little cases cannot stand the cost of attorney fees. To employ juries is to indulge in extravagance which defeats justice at the outset. What is wanted is Oriental justice. An organized court can dispense justice in these little, irritating, troublesome matters swiftly and surely, as the next speaker on the programme will tell you.²

These and similar discoveries will inevitably be made when once our city courts constitute an organism, have a power to think and act. But one of the greatest for all time must be the

² Judge Manuel Levine on The Conciliation Court of Cleveland; for the text of this address see Bulletin VIII, American Judicature Society, 1732 First National Bank Building, Chicago.

pyschopathic laboratory, the great contribution of science to social jurisprudence. At this early stage one who learns what can be done with this aid is shocked to think that our criminal courts are going on in the old blundering way. The clumsiness of a medieval jurisprudence cannot much longer be tolerated. We will know more about the people the law deals with in the future. We will go further even, by testing the minds of witnesses and jurors in civil as well as criminal cases.

It is impossible today to conceive of the efficient administration of justice in the modern large city, efficient from the standpoint of sociology, as well as efficient from the judicial and economic point of view, without specialization and thorough direction of the judicial force. Not to have specialization and direction would be equivalent, in the business world, to employing fifty or one hundred clerks for a department store and allowing them to do any part of the work which they might, at any time, prefer to do. In recoiling from this absurdity, as our system of courts has slowly evolved under the noxious shade of verbose constitutional provisions, we have created numerous special courts and various classes of judges. In commercial terms, our judicial business is done at a number of small and disassociated shops. Occasionally a judge finds the particular work for which his temperament and training fit him, but seldom is he allowed to remain long in that branch. A really expert knowledge of the entire broad field of law is no longer humanly possible. At the present time our judges, admirable men for the most part, patient, long suffering, studious, are square pegs in round holes. They are commonly inferior to counsel specialized in particular subjects. In some cities the separate, and alleged independent, courts in which they sit have conflicting and competitive jurisdiction. It is as though there were several water departments, several fire departments, and several health departments, all operating concurrently or competitively, in the same field. Good service is impossible. We even have no present ideals of good service.

There is absolutely no way to administer justice efficiently in the large city, however honest and intelligent the judges may be, except by the grouping of like causes in particular tribunals which

are but divisions or branches of the one indivisible court, and by the specialization in these branch courts of judges who are consciously chosen for their respective fields by an expert and responsible power. The only question whatsoever is as to the degree of concentration of administrative authority which may be desirable. As to this there is room for argument and need for experience. We only know that the larger the force of judges the greater the need for concentration of authority because the temptation to shirk is in proportion to the opportunity,

I am aware that such ruthless sentiments will provoke solicitous expressions for the independence of the individual judge. But it must be remembered that the individual judge is never influenced even, not to say coerced, in his slightest decision, by the presiding justice, the chief justice, or the whole judicial council. He will be, as the free and untrammelled judge of a strong unified court, vastly more independent than he is now. He will have only to consult the law, the disposition of the supreme court, and his own conscience, a trinity of masters far easier to obey than those to which so called independent judges now owe allegiance. The only independence the individual judge loses in an organized court is freedom to continue cases when the home team is winning.

There can be no reasonable question as to the safety of such concentrated power, a power which we will not undertake to minify, for it must justify itself constantly before the appellate court and before the supreme court of public opinion. A court carries neither sword nor purse. Its every act is done in the open, and spread abroad instantly. The court renders an accounting to the law and to the conscience of mankind. There can be no concealment, no obliquity of purpose.

In the modern city there are powerful factors which are not to be brought under the law except by a powerful judiciary. Often there is no court powerful enough to apply the law of conspiracy and monopoly to the controversies between employers and unions. As a result the entire public suffers from guerilla warfare. In the financial world the great forces war continually, dodging in and out among our courts as if they were fences

or barb wire entanglements. In politics we have feuds in which criminal courts play the parts of pawns when they should be castles of defence.

Country life conserves the best that civilization acquires, but it is in the city that acquisition is made, in the city, where civilization, against the forces of darkness, bucks the line for gains of an inch at a time. Our cities grow ever more and more vast, ever more and more complex. There must be a concentrated civic judicial power to enable our law to cope with modern dangers. Conceive then of such a unified court with its self-discipline, its cohesiveness, its concentrated responsibility, its power great enough to adjudicate between the most powerful social and industrial and political forces, and withal as delicate as the magnetic needle, delicate enough to touch the most sensitive nerves of the social body.

There could be no corrupt police force in a city possessing such a court. A skulking, self-seeking, subservient, conniving, shirking, municipal government, a typical one, in fact, could not live long beside such a judicial arm. The political boss could no longer grant immunity from punishment; the city could no longer be bled on contracts; nor could it long retain an unjust and discriminatory method of taxation.

The lawyer is not ready for such a court because he hasn't the vision. With his interest centered in reform of the rules of procedure, he is like a school boy hoarding pretty pebbles, one ignorant of the science of geology, the other oblivious of the scaffolding which must support the judicial structure.

The social worker has seen the light but has misconstrued its inner meaning. Everywhere in the large cities there is agitation for domestic relations courts and morals courts and boys' courts and psychopathic laboratories. The impatient lay agitators want the imposing facade without laying foundations. It may be that, in our blind, muddled way, we shall continue to grope toward the light, trying and failing, until we shall have paid the price of wisdom, or on the other hand, this being a time when miracles are common, we may sail to glory with the short ballot and the commission-manager plan of city government.

REPEAL OF THE JUDICIARY ACT OF 1801

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The intent of the framers of the judiciary act of 1801 has been to the present day a matter of some doubt. On the one hand it has been shown that alterations in the judiciary system of the United States had long been agitated before the failure of the Federalist party in the elections of 1800.¹ Soon after the establishment of federal courts in 1789 relief had been sought by the justices of the supreme court from the arduous duties necessitated in riding the circuits.² In 1799 a bill designed to establish a system of circuit courts was reported upon which action was postponed. But this later became the basis for the act of 1801.³ It has, therefore, been contended that, quite apart from the political advantage given the Federalists by the passage of the act of 1801, such changes in the judiciary system were warranted by necessity.

At the same time it is equally clear that the amount of business before the courts of the United States, although it had been excessive, had begun to decline. No further prosecutions were to be expected under the alien and sedition acts, and a decrease in the number of suits before the federal courts involving other questions was observed even before the accession of Jefferson to the presidency.⁴ Although the expense involved in the creation of the sixteen additional judgeships was grossly overestimated at the time,⁵ it cannot be doubted that the Republi-

¹ See Farrand: *American Historical Review*, v, p. 682.

² *American State Papers*, Misc. i, pp. 51-52.

³ *Annals 7th Cong.*, 1st Sess., p. 672.

⁴ *American State Papers*, Misc. i, p. 319 et seq.

⁵ In the debates on the repeal of the act of 1801 the Republicans claimed the expense of the new courts to be \$137,000. Professor Farrand estimates the expense at not more than \$50,000. *American Historical Review*, v. p. 685.

cans with their avowed policy of retrenchment had solid ground for feeling that these changes in the judiciary burdened the nation with an unnecessary expenditure.⁶

But what aroused the bitterest hostility among the Republicans was the partisan character of the appointments made by President Adams to the newly created offices. Nominated and confirmed during the last hours of his administration, every officer was a staunch Federalist and thoroughly wanting in sympathy with the new party which was so soon to come into power. A constitutional prohibition prevented the President from rewarding his friends in Congress with places upon the new circuit courts.⁷ But places were found for Richard Bassett who as a presidential elector in 1797 had voted for Adams, and for Jeremiah Smith who had distinguished himself during the two administrations of Washington by his unwavering loyalty in the support of all Federalist measures before Congress. Charles Lee, Adams' attorney general, and Oliver Wolcott, who succeeded Hamilton as secretary of the treasury and won the undying enmity of the Republicans by his conduct of that office, were similarly rewarded. Jared Ingersoll and Philip Barton Key, ardent Federalist partisans, were also commissioned.⁸

Other appointments to the circuit courts were for the most part made by promotion from the district courts. To the vacancies created in these courts President Adams followed the same policy of appointing loyal Federalists. Elijah Paine and Ray Greene, members of the United States Senate, and William H. Hill and Jacob Read, members of the House of Representatives, left Congress to receive places on the district courts. Harrison Gray Otis and John Wilkes Kittera, able advocates of Federalist policies in the House of Representatives, departed at the same time, carrying with them commissions to United States district attorneyships.⁹ It is not surprising, therefore, that factional feeling among the Republicans ran high and severe criticism was meted out to the courts.

⁶ *Annals 7th Cong.*, 1st Sess., p. 26.

⁷ Art. I, Sect. 4.

⁸ *Executive Journal* (1789-1805), pp. 381, 383.

⁹ *Ibid.*, pp. 384-385.

But whether the "act to provide for the more convenient organization of the courts of the United States" was the result of a partisan attempt of the Federalists to retain a hold on the national government after they had been defeated in the elections of 1800 may or may not be true. The fact is that by a large group the changes were believed to be of this character. A letter of Stevens Thomson Mason, a close friend of Thomas Jefferson, declares that "a new judiciary system has been adopted with a view to make permanent provision for such of the Federalists and Tories as cannot hope to continue in office under the new administration."¹⁰

This is, of course, partisan comment on possibly partisan action. Nevertheless there was a general expectation that the new administration would make some changes in the judiciary. The nature of these changes was not early determined and no idea was held that extensive alteration would be possible. On March 16, 1801, William B. Giles wrote Jefferson that "a pretty general purgation of office has been one of the benefits expected by the friends of the new order of things, and although an indiscriminate privation of office, merely from a difference in political sentiment, might not be expected; yet it is expected, and confidently expected, the obnoxious men will be ousted. It appears to me that the only check upon the judiciary system as it is now organized and filled, is the removal of all its executive officers indiscriminately. The judges have been the most unblushing violators of the constitutional restrictions and their officers have been the humble echoes of all their vicious schemes."¹¹

At the establishment of the national government Jefferson had insisted upon the necessity of a strong judiciary. "Let the judiciary," he urged, "be rendered respectable;" and he advocated firm tenure and competent salaries for the judges.¹² But when

¹⁰ Breckinridge MSS., Feb. (19), 1801. The collection of the Breckinridge family papers in the Library of Congress has not yet been opened to the public. I am indebted to Miss Sophonisba Breckinridge for permission to make use of these unusually valuable manuscripts.

¹¹ Jefferson MSS., March 16, 1801.

¹² Letter to Barry, December 21, 1791.

the courts began the enforcement of the sedition act his attitude changed to one of hostility. After the conviction of Matthew Lyon for violation of that measure he wrote: "I know not which mortifies me most, that I should have to write what I think, or that my country bear such a state of things. Yet Lyon's judges and a jury of all nations are objects of rational fear."¹³ But in spite of his indignant protests at the judicial decisions interpreting the obnoxious Federalist legislation, Jefferson at the time he became President, had no thought of assailing the courts themselves. He agreed that no further encroachment upon the judicial power than that suggested by Giles was possible, and replied that "the courts being so decidedly federal and irremovable, it is believed that republican attorneys and marshals, being the doors of entrance into the courts, are indispensably necessary as a shield to the republican part of our fellow citizens, which, I believe is the main body of our people."¹⁴

By June of the same year far more radical plans had developed. From one extreme the Republicans rushed to the other and the actual invasion of the judicial power was advocated. In a letter of June 1, 1801 Giles said: "It appears to me that no remedy is competent to redress the evil but an absolute repeal of the whole judiciary system, terminating the present offices and creating an entire new system, defining the common law doctrine, and restraining to the proper constitutional extent the jurisdiction of the courts."¹⁵ A little later Jefferson admits that "the removal of excrescences from the judiciary is the universal demand."¹⁶

But the real movement for the repeal of the act creating the obnoxious judges came from Kentucky. In November, 1801, the legislature of that State had abolished the district courts and the general court and had established circuit courts for each county.¹⁷ Popular interest in these courts was very keen be-

¹³ Jefferson MSS., November 26, 1798.

¹⁴ Jefferson MSS., March 23, 1801.

¹⁵ Jefferson MSS., June 1, 1801.

¹⁶ Jefferson MSS., August 26, 1801.

¹⁷ *The Palladium* (Frankfort, Ky.), November 27, 1801.

cause of the powers given them in the settlement of land disputes. Upon the establishment of the United States circuit courts, the people of the State feared a conflict with the new system they had just fashioned. Numerous letters from constituents came in to John Breckinridge, who then represented Kentucky in the United States Senate, asking that some change be made in the judiciary system. One correspondent declared: "There is no act of the former Congress that in my opinion will work more subtle or certain mischief than that of extending their courts—as its tendency will be to disunite the people and wean their affections for their state governments. In Kentucky it will operate more mischievously than anywhere else by jeopardizing those principles upon which our courts have hitherto proceeded in settling their land controversies. I much hope this law will be repealed or so altered that we may feel easy under it. With the other excrescences of aristocratic legislation these additional judges may be left to graze in their own pastures."¹⁸

Assured of the support of the administration by the broad hint thrown out by President Jefferson in his first annual message, Breckinridge determined to lead the movement for a revision of the judicial system. At the outset he sought the advice of John Taylor of Caroline who in a long letter set forth the arguments which became the basis of the repeal of the act of 1801. When Breckinridge rose in the Senate on January 6, 1802 to propose the repeal he followed the line of reasoning outlined by Taylor so closely that in many places he made use of the identical words of the letter.

Taylor thought there were two questions involved, first whether the office established was to continue; and second whether the officer should continue after the office had been abolished as being unnecessary.

As to the first, he says: "Congress are empowered *from time to time* to ordain and establish inferior courts.

"The law for establishing the present inferior courts is a legislative instruction affirming that under this clause Congress may

¹⁸ Breckinridge MSS., November 21, 1801.

abolish as well as create these judicial offices, because it does expressly abolish the then existing inferior courts for the purpose of making way for the present.¹⁹

"It is probable that this construction is correct, but it is equally pertinent to our object whether it is or not. If it is, then the present inferior courts may be abolished as constitutionally as the last; if it is not, then the law for abolishing the former courts and establishing the present was unconstitutional and is undoubtedly repealable.

"Thus the only ground which the present inferior courts can take is that Congress may from time to time create, regulate, or abolish such courts as the public interest may dictate, because such is the very tenure under which they exist."

But it would profit the Republicans little to abolish the newly established circuit courts if they were obliged at the same time to make provision for the judges who were the incumbents of those offices. In the second part of his letter Taylor explains how they may get rid of the judges as well as abolish the offices.

"The Constitution," he says, "declares that the judge shall hold his office during good behavior. Could it mean that he should hold his office after it had been abolished? Could it mean that his tenure should be limited by behaving well in an office which did not exist?

"It must either have intended these absurdities, or admit of a construction which will avoid them. This construction obviously is that the officer should hold that which he might hold, namely, an existing office, so long as he did that which he might do, namely, his duty in that office; and not that he should hold an office which did not exist, or perform duties not sanctioned by law. If, therefore, Congress can abolish the courts, as they did by the last law, the officer dies with the office, unless you allow the Constitution to admit impossibilities as well as absurdities. A construction bottomed upon either overturns the benefits of language and intellect.

"The article of the Constitution under consideration closes

¹⁹ Two district courts were abolished by the act of 1801 but the judges were appointed to the new circuit courts.

with an idea which strongly supports my construction. The salary is to be paid 'during their continuance in office.' This limitation of salary is perfectly clear and distinct. It literally excludes the idea of paying a salary when the officer is not in office; and it is undeniably certain that he cannot be in office when there is no office. There must have been some other mode by which the officer should cease to be in office than that of bad behavior, because if this had not been the case, the Constitution would have directed 'that the judges should hold their offices *and salaries during* good behavior,' instead of directing 'that they should hold their salaries during their *continuance in office.*' This could only be an abolition of the office itself, by which the salary would cease with the office, although the judge might have conducted himself unexceptionally.

"This construction certainly coincides with the public opinion and the principles of the Constitution. By neither is the idea for a moment tolerated of maintaining burthensome sinecure offices to enrich unfruitful individuals.

"Nor is it incompatible with the 'good behavior' tenure when its origin is considered. It was invented in England to counteract the influence of the crown over the judges. And we have rushed into the principle with such precipitancy, in imitation of this our general prototype, as to have outstript monarchists in our efforts to establish a judicial oligarchy; their judges being removable by a joint vote of Lords and Commons, and ours by no similar or easy process.

"The tenure, however, is evidently bottomed on the idea of securing the honesty of judges while exercising the office, and not upon that of sustaining useless or pernicious offices for the sake of the judges. The regulation of officers in England, and indeed of inferior offices in most or all countries, depends upon the legislature; it is a part of the detail of government which necessarily devolves upon it, and is beyond the foresight of a constitution because it depends upon variable circumstances. And in England a regulation of the courts of justice was never supposed to be a violation of the 'good behavior' tenure.

"If this principle should disable Congress from erecting tribu-

nals which temporary circumstances might require, without entailing them upon society after these circumstances by ceasing had converted them into grievances, it would be used in a mode contemplated neither in its original or duplicate.

"Whether courts are created by a regard to the administration of justice, or with the purpose of rewarding a meritorious faction, the legislature may certainly abolish them without infringing the Constitution, whenever they are not required by the administration of justice, or the merit of the faction is exploded and their claim to reward disallowed."²⁰

Breckinridge, in moving the repeal of the act of 1801, took the ground that the changes made in the judiciary were unnecessary and improper in that they had increased the number of federal judges at a time when the amount of business pending before the courts of the United States was steadily declining. He began by accepting the construction laid down by Taylor that the act of 1801 was "a legislative construction" of the power of Congress "from time to time, to ordain and establish inferior courts," because the two districts were abolished by the twenty-seventh section of that act. But independent of this construction, he insisted that it would be a paradox in legislation to say that the legislature in one Congress has a discretionary power to establish inferior courts and yet be restrained from abolishing them in a subsequent Congress of equal authority.

With respect to the judges he was equally certain that they must cease to be in office when the repeal of the act was accomplished. The constitutional guarantees, he thought, protected them against removal by the executive or diminution of their salaries by the legislature but never contemplated the possibility of their surviving the destruction of their offices. This would be to create a group of "nondescripts" unacknowledged by either the letter or the spirit of the Constitution.²¹

The repeal was carried and the courts were abolished and the judges legislated out of office. But this did not seem sufficient to many persons in Kentucky and the western country. In

²⁰ Breckinridge MSS., December 22, 1801.

²¹ *Annals 7th Cong.*, 1st Sess., pp. 26-29.

truth, what was wanted by these more radical advocates of states rights was the destruction of all inferior courts of the United States and the limitation of federal jurisdiction to the scope proposed by Richard Henry Lee in the debates on the judiciary act of 1789.²² Senator Breckinridge was urged to "go farther and make such a change in the Constitution as to limit the jurisdiction of the federal courts to courts of admiralty and cases arising under the Constitution." If this could not be done he was asked to "have it done away with in the State of Kentucky." His constituents pointed out that Kentucky was so remote from the eastern section of the country that the exercise of authority by the federal courts must interfere materially with their welfare.²³

A judicial review of the repealing act was never had, but its constitutionality has been challenged by eminent authority.²⁴ Early in the debates on the repeal Breckinridge had pointed out that "if the judges are entitled to their salaries under the Constitution, our repeal will not affect them; and they will, no doubt, resort to their proper remedy."²⁵ Thereafter an appeal to the courts by the deposed judges had been in the minds of all. To prevent such action the next session of the supreme court was set for February, 1803, the August term being omitted in 1802. This was denounced by James A. Bayard, the leader of the Federalists in the House of Representatives, as "a patchwork designed to cover one object, the postponement of the next session of the supreme court . . . to give the repealing act its full effect before the judges are allowed to assemble."²⁶

Denied a judicial review of the act depriving them of their commissions, the judges of the circuit courts forwarded a petition to Congress in which they represented "that the rights secured to them by the Constitution, as members of the judicial depart-

²² On June 22, 1789 Richard Henry Lee proposed to amend the Judiciary Act to provide "that the jurisdiction of the federal courts should be confined to cases of admiralty and maritime jurisdiction." Maclay: *Journal*, p. 74.

²³ Breckinridge MSS., February 22, 1802.

²⁴ *Story on the Constitution*, ii, p. 401.

²⁵ *Annals 7th Cong.*, 1st Sess., p. 30.

²⁶ Hamilton MSS., April 12, 1802.

ment had been impaired," and asking that the case be submitted to judicial determination. The Senate declined to consider the petition, while a proposition to submit the matter to the courts for decision was defeated in the House. Here it was held that the right to abolish inferior courts rested with Congress and that the judges were entitled to compensation only for services rendered.²⁷

It is superfluous to point out that the importance of the repeal of the act of 1801 lay in the fact that the final determination of the right to abolish inferior courts and to deprive the incumbents thereof of their commissions fell to Congress. No opportunity being given the judiciary to interpret the Constitution with respect to this power, there was no means of challenging the validity of the measure in the way customary in our government. Congress was, therefore, free to claim that a precedent had been set which should determine future action in dealing with the judiciary.

The seriousness with which this precedent was urged in the course of the recent debates on the measure abolishing the United States commerce court should call attention to the unsatisfactory position of the doctrine of congressional control over the inferior courts. Chief Justice Marshall in private commented upon the repealing act of 1802 considering it to be "operative in depriving the judges of all power derived under the act repealed. But the office remains which is a mere capacity, without a new appointment, to receive and exercise any new judicial powers which the legislature may confer."²⁸

In practice this is the view Congress has followed in every alteration made in the judiciary subsequent to 1802. Nevertheless the validity of the early precedent has been asserted in both houses of Congress and, according to many statesmen, has never been abandoned. That it may again be brought forward to justify an encroachment upon the judiciary portends a real danger to this department of government.

²⁷ *Annals 7th Cong.*, 2nd Sess., pp. 427-441.

²⁸ Hamilton MSS., April 25, 1802.

LEGISLATIVE NOTES AND REVIEWS

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Present Tendencies in Judicial Reform. An attempt to appraise existing forces making for judicial efficiency partakes almost equally of the hazards and the enticements of prophecy. Throughout the evolution of Anglo-American jurisprudence there have been upheavals from which have emerged definite gains for the courts as a practical means for the equitable adjustment of private controversies. Such an upheaval gave birth to the court of chancery and admitted the lucidity and directness of the civil law. Another such upheaval resulted in the substitution of English for the bastard law Latin of court pleadings and process. Such an upheaval came in the State of New York in 1848 when the people, through their legislature, undertook to reform the administration of justice by abolishing archaic forms in favor of common sense. In England the climax of fifty years of agitation was reached with the judicature acts of 1873 and 1875 by which all courts of England and Wales were merged and given concentrated and responsible administrative direction. There is abundant evidence that such another upheaval, now long overdue in the United States, is well under way.

From feudalism to the self-government of the American people in the twentieth century is a long journey. The law and the means for its enforcement have necessarily been found lagging at many places along the road. Progress has been inconstant because it has been in response to conditions of unstable equilibrium due to the discrepancy between the current idea of justice and current practice. At the present time ideals are far in advance of legal justice; in practically every other respect we are a whole generation nearer ideal efficiency than is our judicial system.

In the latter part of the eighteenth century English law had caught up in a measure with social and commercial progress so that Blackstone could record his belief that the English system had attained final form and relative perfection. But the modern world was even then approaching a swirling movement which has constantly accelerated and

is still gaining impetus. So Blackstone's complacent comment served as a text for the first great legal agitator of modern times, Jeremy Bentham, who spent a long career endeavoring to convince the world that existing legal systems, and especially common law procedure, were archaic.

Bentham's campaign did much to encourage experimental legislation and inculcate the idea that codification of unwritten law is a sure step forward. He probably did more than any other individual toward forcing legal leaders to the half-century of reform which finally carried English courts and procedure from obscure, wasteful, medieval methods to a system which stands today as a model of administrative efficiency.

During that period of agitation and change America struck directly at the dead formalism of common law procedure through the Field code, enacted in 1848 in New York, and copied widely by western states. English reformers profited greatly by this innovation. The central ideas of merging law and equity, of abolishing fictions, simplifying language, and subjugating formality to substantial rights they adopted unequivocally. Having done this, they did not stop, but proceeded to create a practical judicial machine and fix responsibility clearly upon this unified court by confirming to it the ancient prerogative of creating and regulating procedure subject only to a small body of statutory rules which deal only with the larger aspects of the subject.

Working with much the same materials English law reformers created an efficient and responsible judicial system while most of our state courts still labor under the disabilities which were prevalent in the mother country fifty years ago. We have constantly tinkered procedural rules during that half-century, in both code States and common law States, but the reconstruction of the political machinery of the judicial branch which is essential to substantial progress has only been begun.

America's legacy of law and procedure was of the sort approved by Blackstone and condemned by Bentham. The creation of state systems of courts under the federal constitution called for political invention. The English court system at that time was highly centralized, too much so for a compact area, and entirely unsuited to one of our broad and sparsely occupied states. In creating the federal court system something had been borrowed from France, where decentralization had been accomplished not long previously. The new state systems show the same influence. The judges of general jurisdiction were required to visit every county seat so that it was only on appeal that it

was necessary for causes to be heard far from the place of their origin. To serve every village in the county and even scattered farm communities the justice of the peace was given civil jurisdiction in small causes. Consistent with the doctrine that ours was a government of laws and not of men this decentralized system was left to run itself in accordance with statutes and common law procedure and practically without any organized responsibility as to administrative functions.

In the early decades of the republic ours was indeed a new world. The shackles of tradition were burst by the forces of freedom, unbounded natural resources and limitless opportunity. In almost every respect the citizens of the new States lived lives different from those lived by their over-sea kinsmen. The need then for a new American law, adapted to changed conditions, was paramount, and the legislative branch was naturally inadequate to the need. The demand for a law of decisions suited to the new environment was often sufficiently urgent to overshadow the rights of individual litigants in a particular cause. It appeared better, in a considerable proportion of causes in a new State, that the parties litigant, or one of them, should suffer in the case at bar, than that all of the people of the State should suffer indefinitely from a rule of law which had become archaic.

This situation tended strongly to make of our higher courts machines for declaring law and gave them a cast which still strongly persists, though the need is today less urgent. It also tended to develop control over the essential judicial acts of trial judges to an extraordinary degree. The typical State judge of *nisi prius* jurisdiction, though almost free from leadership or restraint as to his administrative conduct, is in a very narrow straightjacket with respect to his essentially judicial acts. The slightest infringement of the autocratic domination of the court having power to reverse his decision results inevitably in discipline. The intention has been to leave the trial judge as little room for discretion as possible, so that he will not be affected by the appealing elements of the case at bar, but will decide in accordance with the body of impersonal law laid down for his guidance. When this fact is given consideration with the equally striking facts of political dependence due to short tenure in most of the states, and dependence upon the legislature for the most minute rules of procedure, the vaunted independence of the judiciary is seen to be something from which the trial judge is excluded.

Until the enactment of the Field code in New York in 1848 there had never been any question as to the right of the judicial branch to formulate rules of procedure. For some time prior thereto the common law

procedure in the leading commercial State of the Union had been falling in public estimation. It was inevitable that some such iconoclastic work as David Dudley Field's should be done and it was fortunate that there was one ready to perform this difficult work so well. It was not the author's fault that it fell so far short of attaining the goal of efficiency in the adjudication of private controversies.

Rarely does so much good and so much evil flow from a single enactment. The good has come from complete severance from common law procedure, over-technical, musty, wasteful, and this good is best exemplified in Kansas and Wisconsin, States where the essential idea of the Field code has been preserved. The evil is seen in the dependence upon legislatures for procedural changes, in common law as well as code States. This too was inevitable, doubtless, in view of the flabby nature of judicial organization, and is not to be blamed upon the great codifier. Field produced a code which sought to regulate only the general features of the practice by statute, leaving the courts to control the details by means of rules. This tended to center responsibility upon the courts.

But it was a case of good seed scattered on stony ground. The judges of the State of New York, unable by reason of their decentralized organization to react to the demands of a skeptical, hurrying, practical age, were nevertheless able to defeat the plain intent of the new code. Their minds were trained to respect for formality rather than love of justice. They were jealous of the new system. In a sense a fight had begun between the people, represented by the legislative branch, and their courts, and the former naturally had recourse, more and more, to compulsory legislation until finally the original Field code was submersed by the Throop code of 1877, called properly the code of civil procedure, which took from the courts practically all control of procedure and attempted to regulate every detail through statutory enactments. There has not been a year since without amendments to the code of civil procedure. The legislature annually wrestles with problems alien to its experience and responsibility. The courts annually endeavor to assimilate new rules. The code of civil procedure has been well likened to the upas tree which grows roots from the tips of its branches until eventually one tree becomes a jungle.

New York was the first State to appreciate the harmful division of responsibility between the courts and legislature by which the former attempted to administer justice according to several thousand rules laid down by the latter. In 1899 a committee on law reform of the State

Bar Association recommended "a simple practice act containing the more important provisions of the present code rearranged and revised, supplemented by rules of court."

Gradually the need for restoring to the courts their common law responsibility for regulating procedure by rules of court was realized elsewhere throughout the country. In the common law State of Michigan for instance it was discovered recently by a commission directed to consolidate and revise the statutory procedure that there were over 2700 sections of statutory law. The same commission illustrates the inefficacy of statutory procedure by the struggles of the legislature through five successive sessions to frame rules for chancery appeals. Finally the legislature gave up in despair and directed the supreme court to do the work. There has been no trouble since, and whether this happy result is due to the intrinsic superiority of the judges as draftsmen, or to parental charity towards the court's own offspring, it is not necessary to determine.

In 1909 the American Bar Association's Committee to suggest remedies and formulate laws reported in favor of a short practice act dealing with the larger procedural matters, and leaving the details to rules which the courts would have the power to alter as needed.

More recently the bar associations of several States have backed plans embodying this idea. While there had been little real gain in legislative chambers there has been notable progress in convincing the profession that the delicate structure of judicial procedure must be freed from the crude hand of the legislator. There is more to this than the mere matter of skill in drafting. Courts will always construe the mandates of an alien power narrowly and jealously. To compel judges to do thus or so is practically impossible, and the result is sure to be the piling up of a great mass of rules which will prevent them from doing, in many instances, that plain and simple justice which they would like to do. It results further in multiplying opportunities for trying incidental issues so that the energies of litigants, lawyers, and courts are wasted and substantial justice languishes.

The point is important also because if courts are to be permitted and required to regulate procedure in the interest of substantial justice as against time and energy squandered in warring over formalities, they will necessarily have to develop some administrative faculty. It is obviously unfair to expect the average State supreme court to succeed in formulating the rules of all the courts of the State. There are two reasons for being skeptical of success; in the first place supreme court

judges are almost universally overworked as it is, and secondly they are men trained not to administrative, but to academic, duties.

It is not unlikely that several States will act upon this principle, and then the need for adequate machinery will be exposed. It would seem that the rule making power, implying a large scope for administrative orders, so that judges will be chosen for specialized work, should be vested in an administrative board similar in makeup to the judicial council of the English court system. Such a council should be composed of the presiding justices of the several divisions of the State judiciary.

Restoring the rule-making power, though important, is after all only one step in the direction of making the judges of the typical State all parts of a unified, coördinated, and responsible body for the administration of justice. The American people have distrusted their judges and have taken from them one element after another of independence until they have left them judges in name only. It is not necessary to determine whether this jealousy of judicial power and autonomy was due to unfit service, or whether unfit service has been due solely to this deprivation of power and responsibility. It is apparent that they make a vicious partnership.

The general unfitness of State judicial organizations to the needs of the times is more emphatic than is generally realized. We live in an age of tremendous social and commercial forces. Organizations have been created to monopolize the means for existence. To cope with such potent bodies a powerful judiciary is necessary. In this field the States have quite generally failed. That there must inevitably be a building up of a competent judiciary is a plausible belief. The nucleus of the new order is in fact already in existence and doing valiant service.

Even before the storm of criticism burst upon American courts the new idea had been given birth. It naturally came at the place where the need was most insistent, in the large city. Ten years ago the administration of justice was as ineffectual in Cook County, Illinois, as anywhere in the civilized world. The courts of general jurisdiction, owing to lack of organization and administrative control, to an antiquated procedure overlaid by a great body of highly technical decisions, and by the sensational increase in the volume of business, had become two or three years in arrears, so that commercial interests suffered severely. An equally great evil existed in the mal-administration of justice by a number of the fifty-four justices of the peace and the one hundred constables. Under an amendment of the Illinois constitution it became possible to devise a municipal court for the city of Chicago. The intention was to

relieve the *nisi prius* branch of a share of its commercial causes and to abolish the justices of the peace and police magistrates. To accomplish this the new municipal court was given unlimited jurisdiction in contract causes, and jurisdiction in tort actions to \$1000. Its criminal jurisdiction was the same as that of the magistrates displaced, namely, to try in cases of misdemeanor and to examine in cases of felony. No chancery jurisdiction was conferred.

The new court was provided with twenty-seven judges and a chief justice. It was created unlike any existing court in this country and this was due in part to the fact that three business men served on the committee which employed the draftsmen. The court was given an organization centering responsibility and administrative control just as would be done in a commercial concern, and provision was made for statistics and publicity. The act declared that the chief justice "shall have the general superintendence of the business of said court; he shall preside at the meetings of the judges, and he shall assign the associate judges to duty in the branch courts, from time to time, as he may deem necessary for the prompt disposition of the business thereof, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be assigned. . . . The chief justice shall also superintend the preparation of the calendars of cases for trial in said court, and shall make such classification and distribution of the same upon different calendars as he shall deem proper and expedient. Each associate judge shall at the commencement of each month make to the chief justice under his official oath, a report in writing of the duties performed by him during the preceding month, which report shall specify the number of days' attendance in court of such judge during such month, and the branch courts upon which he has attended, and the number of hours per day of such attendance It shall be the duty of the chief justice and the associate justices to meet together at least once in each month, excepting the month of August, in each year, at such hour and place as may be designated by the chief justice, and at such other times as may be required by the chief justice, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them. At such meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them pertaining to the said court, and to the officers thereof, and shall take such steps as they may deem necessary or proper with respect thereto, and they shall have power, and it shall be their duty to adopt or cause to be adopted

all such rules and regulations for the proper administration of justice in said court as to them may seem expedient."

The foregoing provisions mark the beginning of the new era of responsible judicial administration. They created a wieldy body of judges subject as to administrative acts to a single mind. The head of the court was given power to create such branch courts as he might at any time consider necessary. From the entire body of judges he can at all times choose the one best suited to any particular work. The court is given full power, subject to comparatively few regulations in the act, to create its own procedural rules and adopt such administrative orders as appear necessary. The judges are required to meet together to pass upon current business and more particularly to consider all complaints which may be presented.

The act also provided for economical operation by permitting abbreviated orders, so that records are kept on a card catalogue basis.

The opportunity afforded for doing notable work permitted of securing an ambitious, high powered and high priced man for chief justice; he was able, under the convention system of nominating then in vogue, to assist materially in selecting the candidates for the first quota of twenty-seven associate judges on the winning ticket, so the new court was started under favorable auspices.

It was a big task at that. Almost from the start the court was loaded up with business, and a world of work had to be done swiftly and accurately to get this business organized and systematized. The chief justice and friends of the court had alterations made to 44 of the 67 sections of the act at the outset. At the end of two years the court undertook to create a simple, sensible, reform procedure for its first class civil actions to take the place of a system which had undergone slight change since the reign of Queen Anne.

One of the associate judges spent six weeks in the London courts; based upon his report a few rules were drafted which served to revolutionize the knotty problems of pleadings. The plaintiff was required, in lieu of the highly technical common law declaration, to state under oath, and in plain language, the nature of his claim, and the defendant was required to show, in his answer, briefly and under oath, facts tending to prove a meritorious defense. This simple procedure lifted from the commercial life of the second city of the Western world the incubus which had ridden it for decades.

One of the omissions in the act was supplied by Chief Justice Harry Olson, who compiled full statistics of all branches and published them

in an annual report. Subsequently the act was amended to make this work mandatory. The annual reports make a unique and invaluable contribution to the public records of Chicago and to the history of judicial administration.

Specialization was of course utilized from the start, as both civil and criminal causes were included in the business of the court. In civil causes special branches were created for (a) quasi-criminal and citations; (b) forcible entry and detainer; (c) attachment, garnishment, and replevin. The economy of administration at a centralized branch under an expertly selected judge was so conspicuous as to indicate further development of the principle. At that time, in Chicago and in every other city in the country, such semi-related matters as those arising from non-support, desertion, illegal parentage and offenses against minors were dealt with as misdemeanors in the police courts. Intelligent and uniform treatment was impossible. In fact nobody had conceived of them as allied causes all of which affect the family. Nobody had devised a method for treating such causes more seriously than other misdemeanors. So the branch court of domestic relations was an invention, illustrating how improved methods of administration arise naturally when responsibility and power to function are centered in a conspicuous manager. This legal invention was a tremendous success from the beginning. Its best praise is probably its briefest, that it serves to bring families together which under the former regime were forced asunder by the courts.

Each year since has seen some notable addition to the list of specialized branch courts created by the fiat of Chief Justice Olson. The speeders' court collected \$10,000 in fines in sixty days and put the breath of life into traffic statutes and ordinances which were hardly enforceable before. Next came the morals branch court to which are taken all the women arrested for offenses against chastity. For the first time an intelligent policy toward these unfortunates became possible, so that the court was no longer allied with vicious elements in bleeding society's victims.

The boys' court promises to be the greatest of the special branches, as it fills the gap between the juvenile court and the regular criminal court. It takes first offenders at the critical age, segregates them from confirmed criminals, and saves as much as possible for useful citizenship.

The small claims court is the latest specialized branch, starting with a civil jurisdiction of \$35 and under. In this branch court the little

lawsuits of the community are given a speedy adjudication by a competent and respected judge. Procedure is absolutely informal. Parties do not need lawyers to get justice. The judge examines the witnesses, makes a finding of fact and awards judgment in accordance with law so efficiently that for the first time real justice is possible in causes which cannot bear the expense of jury trials. A brief experience with this innovation indicates that the jurisdiction should be greatly extended and that the mere existence of such a practical tribunal results in the paying of bills and the automatic reduction of controversies.

This remarkable court has added to its triumph by calling to its aid the newest of sciences and establishing a psychopathic laboratory. If the percentage of feeble-minded is the same in Chicago as is predicated generally, from 2 to 3 per cent, there are from 50,000 to 75,000 sub-normal minds, and if this is so it is not surprising, in view of the fierce competition of metropolitan life, that a considerable number of those arraigned for offenses of various kinds should be among those classed as permanently feeble-minded. For such offenders the conventional fine or short imprisonment is entirely ineffectual; some change of environment which will relieve the individual of responsibilities too severe for his mentality and will power is indicated. Before long it will be possible to sentence these psychopaths to rural industrial colonies where they can live happy and useful lives. The first year's study has shown that a considerable proportion of all offenders are of this class, not actively criminal, but simply unable because of brain lesions to live up to the multitudinous regulations of metropolitan society.

Reference has been made already to the thorough organization, under the American system, of responsibility for the exercise of the essential judicial function. In this respect the associate judges of the municipal court of Chicago are on the same footing as other trial judges. They must yield to the decisions of the appellate and the supreme courts of the State. But unlike the other judges, they are subject to administrative direction as well. They must occupy the branch court to which they are assigned by the chief justice and must report to him monthly as to the amount of time devoted to their duties. Complaints concerning their work may at any time be lodged with the chief justice and may even become the subject of discussion at a meeting of the court.

Some will say that this strips the judge of all independence and others will add that it is humiliating. But it must be noted that the chief justice has absolutely no authority except in the administrative

field. He cannot control a decision in a given cause; a mere hint that he would like to have an associate judge decide thus or so would start a scandal which would ruin the chief justice.

In return for the administrative freedom, or lawlessness, of the typical trial judge, these associate judges participate in the strength and the victories of a powerful and successful organization. Any one of them alone, being but one judge out of three-score and ten in one county, would be insignificant. As a member of the municipal court every judge, just so long as he serves faithfully, has the backing of a strong institution. In so far as he wants to serve efficiently, he is more independent than the isolated and uncontrolled judge, for the latter is frequently rendered pitifully dependent by the futility of his work under a system that lacks coördination and that prevents him, however hard he may work, from keeping his docket from becoming congested.

Powerful as this court is, the slightest complaint made in good faith receives attention. Never before have the people had a really democratic court. An associate judge complained of is given a chance to explain away the complaint as he ordinarily can do readily enough. If he cannot he is given an opportunity to make amends. As long as he shows a right spirit the affair is a secret between himself and his superior. This dependence upon the success of the entire court makes every associate judge jealous of its reputation, so that self-discipline practically relieves the chief justice from the seemingly difficult task of censorship. The very judges who would be least dependable if not subject to discipline are the ones who most look up to the chief justice to extend to them a fatherly charity upon occasions.

With more than 160,000 causes per annum the Chicago municipal court, now increased to thirty-one members, keeps abreast of its calendar. Its money judgments exceed those of all the other courts of the entire State of Illinois, and are greater even than the judgments of the high court division of England and Wales, serving a commercial people numbering about thirty millions.

There is no pretense however that the administration of justice in Cook County is on an ideal plane. On the criminal side it is quite the contrary. The municipal court can do no more in felony cases than hold respondents to the grand jury. In such causes responsibility is divided between the municipal court, the state's attorney, the grand jury, and the criminal court. After the municipal court judge has found probable cause for believing the respondent guilty the powers of darkness and irresponsibility rule. Only 10 per cent of such persons

held for trial are convicted, and half of this number then receive sentences within the jurisdiction of the municipal court judge. That is why Chicago, with machinery capable of doing its criminal court work capably, is still infested with "dips" and "stickup" men.

There is no pretence that the municipal court is perfect. The offices of chief clerk and chief bailiff are elective and to a considerable extent beyond control of the judges, so that more employes are carried than are necessary. Few clerks and bailiffs receive more than \$1200 a year. Judges are paid \$6000. And yet the average cost per case for clerk hire, and the average cost for bailiff's services, are greater than the cost for the judge's services. In most courts there is of course no means for making a comparison.

The most serious defect in the court is the brevity and uncertainty of tenure and the irresponsible method of selecting judges under the direct primary system of nominating. The first judges of the court were hand-picked. They made a great team. Most of them are gone, and places now are filled by the choices of three-fourths of a million voters. Blind chance plays too great a part in this game. One of the court's best judges was defeated for reelection in 1914 and in 1915 was returned to the court with a majority of 139,000 votes.

It is not claimed either that the extreme form of concentrated authority is ideal. To direct personally the work of thirty associate judges, serving in a dozen branches, and to act as intermediate with the public, the press, the legislature, the city council, the party committees, and half a hundred voluntary social organizations, is too heavy a load for any ordinary chief justice. The court should have several permanent divisions, each with its presiding justice, and these heads of divisions should constitute, with the chief justice, a judicial council, or governing board. The chief Justice should preside over the deliberations of the council and should execute its orders.

But the main fact is that the machine works. Grant that it took an exceptional man to develop this judicial innovation, and it can still be maintained that the ideal organization, as briefly outlined, would permit of comparatively efficient work even by mediocrity. But courts which have organized administrative responsibility become successful to such a degree that they attract ambitious men. Given a sensible means of selecting judges and they will command the highest talent in the legal profession. In a very large city the form of selection should undoubtedly be appointment by the chief justice, the man who has continuing responsibility for the efficient functioning of the appointee.

This is perfectly in accord with short ballot principles, for the entire electorate could wisely select the one local judicial manager, chosen especially for his administrative ability, and he would not only have the best knowledge of the fitness of available candidates, but would have the highest motive for wise selection. This does not mean necessarily life tenure; there is no reason why, after a probationary term, the people should not vote upon the continuance in office of such appointees. It might also imply selection from a public eligible list made up by the judicial council. Under such a plan the term of the chief justice would be short, say four years. Present experience makes it comparatively easy to formulate a scheme of organization which will produce a court tractable to public opinion, subservient to appellate courts, and independent in the face of anti-social forces.

The Chicago court idea has influenced court reorganization in a number of the larger cities, but in every case the *nisi prius* bench has escaped inclusion. This is only a temporary phenomenon, probably, because in every instance these new courts are successful, and their success points clearly to the need for complete unification and complete administrative control.

The idea has even greater application. Specialization becomes more and more necessary as our law becomes broader and our civilization more diversified. To meet this need with specialized tribunals is to divide judicial power into so many rigid and uncommunicating receptacles that efficiency will be hopeless. There must be specialization, but it must be subject to conscious and expert management; must be secondary to unification. Metropolitan needs are most insistent, but specialized judges will soon be demanded outside of the large cities, and the need can be met only by state-wide unification and administrative control. In the average State the task of directing the entire judicial machine would be no more difficult than is Chief Justice Olson's task. This business management of the courts will not be in conflict with the judicial management already so thoroughly worked out. It will be supplemental, not competitive. It is only along this line that the power of the courts can be increased, making them adequate to modern needs, and at the same time insuring their amenability to popular demands. The people will give power to judges who are subject to discipline, and not to irresponsible judges. This discipline can be of the kill-or-cure variety implied by the judicial recall, or it can be of the constructive, prophylactic, continuing kind which is found necessary to success in commercial enterprises.

The issue thus seen is between political and judicial methods which have broken down under the stresses of modern life, and business methods which have been evolved amidst these same forces; it is the issue between efficiency and pseudo dignity, between medieval mystery and the spirit of modern service.

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Legislative Reference for Congress. During the past fiscal year the Library of Congress has had available an appropriation for legislative reference service. Such a service is familiar in the several States in connection with the work of the state legislatures. Experiment of it in connection with a national legislature is novel.

The appropriation read "to enable the librarian of Congress to employ competent persons to prepare such indexes, digests and compilations of law as may be required for Congress or other official use;" and the sum granted was a lump sum—\$25,000. The description, however, of the service as the preparation of "indexes, digests and compilations of law" was merely by way of coupling the undertaking with one maintained previously for a half dozen years (1906–1911) under this phraseology, and thus to avoid a point of order against the item as "new legislation." The result of the earlier work, done under a much smaller grant, was the preparation merely of an index to the general and permanent law in the federal statutes down through 1907. In reviving the phraseology, the proposers of the new undertaking had no thought of limiting the field to law nor the product to indexes, digests and compilations, though the last term is broad enough to include almost every kind of a statement that would be prepared by a Legislative Reference Bureau. They had in mind a situation that confronts every legislative body: the need of data¹ sought out, digested and brought to bear upon a particular subject. The amount of such data to be considered in the adequate determination of legislation for a State is no small one,

¹The "data" furnished by a legislative reference bureau are of course only such as may be yielded by material in print, i.e., secondary sources. They are not sought in the field or laboratory as are the data sought by an investigating commission, such as that on industrial relations. A legislative reference bureau undertaking original investigations of this latter sort—e.g., by taking testimony or canvassing for mere opinion—runs the peril of two criticisms: (1) of embarking in projects for which it is not equipped and (2) of promoting mere partisanship.

for in addition to the history and theory of the subject it includes necessarily the experience of other States and, optionally, in certain subjects, the experience of foreign countries. The amount to be considered by our federal legislature includes all of this, and more, in that the experience of foreign countries must necessarily be considered; and the subjects themselves are both broader in range and more intricate. In large degree the data exist in printed sources. They exist in large part in the collections of the Library of Congress. But they are scattered there through over two million volumes, in numerous languages. They are expressed in various ways intelligible only to an expert. And to search them out, to compare them, to "reduce" them, requires not merely ordinary familiarity with the use of books and an adequate linguistic training, but a special technique. To identify them promptly requires also a special apparatus in the way of guides and indexes. Accessible this mass of material has always been: but without these aids it has not been for the legislator fully *available*. The committees of Congress have competent clerks; each senator and representative also a competent secretary. But neither the time nor the ability of these suffices for the search of these foreign sources. Nor does the time, even if the ability, of the senator or representative himself. His need is indicated in the complaint of a senator last fall: he had asked for certain "information," and we had only sent him "some books!" The information was, to be sure, in the books sent. The specific passages were even marked. But he hadn't time to draw them off, digest and compare them. He wanted this done for him, and he thought he had a right to ask it.

The passages were all in English. Had they been in a foreign tongue there would be the further need of a translation. If they included a table of statistics he would want this reproduced, so as to avoid the encumbrance of a heavy volume, and substitute for it a single sheet to be inserted in his manuscript.

To supply these conveniences is not the ordinary function of a library. A library undertakes merely to supply the books, with such suggestion as to the sources appropriate to the inquiry as may be within its abilities. The "information" thus furnished is bibliographic information. Having furnished it, the library leaves the actual research and utilization of it to the inquirer himself. The one step further—to make the search, to assemble the data and to digest, compare and apply these to the subject of the inquiry—is the service expected of a legislative reference bureau.

Our appropriation was available with the beginning of the fiscal

year—July 1. As, however, the demand would be slight until the beginning of the regular session, in December, the full organization of the staff was postponed until then. Certain preliminaries were however desirable: in particular a consideration of questions pending which were likely to receive attention during the session. These might be indicated (1) in the program outlined by, or in behalf of, the administration, (2) by the announced programs of certain major committees (3), by bills actually pending in one House which had passed the other, and (4) by other bills pending which were likely to be passed even in a short session.

Among the subjects of legislation thus clearly in prospect were (1) the conservation bills, so-called; (2) the merchant marine; (3) the government of the Philippines; (4) immigration. On some of these one House had already acted. There were also, in the same category, bills relating to convict-made goods, to railroad securities, to federal aid in road-making, to a bureau of labor, safety and to publicity in campaign contributions. Among the subjects in which the administration had expressed interest was that of a national budget system.

To anticipate the demand for "data" on these subjects, and to identify and, so far as practicable, actually assemble the source material in advance, was the natural course: and it was adopted. In only one subject, however, was an attempt made to draw off and digest the data. This was in relation to the budget. The demand here was likely to be for a description of budget systems in foreign countries. A descriptive account of these was therefore undertaken, beginning with Great Britain. As to other subjects the response awaited the demand, the character and angle of which could not well be anticipated.

One other preliminary was obvious: that is, to consider the field of each of the major committees of Congress and to assign each field, or the several contiguous fields to some one of the staff who should give it special study and be specially responsible for the treatment of it. If not a specialist in the subject matter, such an employee would at least become one in his knowledge of the sources, and his familiarity with the apparatus for the ready use of them. He would inform himself as to what exists in print, recommend material to be acquired, and acquaint himself with guides, indexes and the other aids to quick and certain reference. All of such material and aids in the various executive and scientific departments and bureaus were of course to be noted, and if available in printed form, to be assembled as part of the apparatus of the division.

Demands certain to be expected would involve our own (federal) statutes. A complete, detailed and scientific index to these would therefore be essential. Now such an index did not exist. One "compiled" was issued in 1906: but it consisted merely of a consolidation of the indexes to the biennial volumes. The index prepared by our previous corps and issued in 1908 did attempt to be both scientific and detailed. It was based on a set of schedules—subject headings—prepared in advance and submitted for criticism. The two volumes issued covered, however, only the period to 1908, and merely the permanent and general law. It needed to be brought to date; and to be complemented by an index to the private and local acts, many of which contain provisions of general import beyond the occasion or the locality. A group of indexers applied specifically to this work was accordingly organized and has pursued steadily the construction of these indexes as part of the necessary permanent apparatus of the division.

With the session the particular demands began to come in. Their interest is in their character and range, but also in relation to the apprehensions expressed by opponents of the service itself. For from the time such a service here was suggested there have been such opponents. Some protested that its effect would be to turn the library into a "bill factory." Their objection was met by the entire elimination from the project of "bill drafting," which is a feature of state legislative service, and which was urged here. Others foresaw in the services a mass of material of trifling public import, which would be fed into the Record in the form of speeches either wholly partisan, or at most conducing rather to the personal vanity of the legislator than to the efficiency of legislation. Others anticipated demands purely private, local or personal, which would exhaust its energies without in the least advancing the business of legislation.

The actual demands during the three months of the session may be grouped as follows: for digests or compilations of federal or state statute or constitutional law on various subjects; for comparative studies, compilations, abstracts or translations of foreign law or decrees on various subjects; for compilations on certain questions of legislative procedure—domestic and foreign; for translations and compilations on certain subjects in international law; for digests and compilations on powers of the executive—in Canada, France and Germany—over the tariff; for statistical information on some nineteen subjects, foreign and domestic; for extracts (furnished in the form of photostat reproductions) of various articles in newspapers or periodicals; for lists of bills intro-

duced on certain subjects; for memoranda on bills pending, e.g., the construction of certain words or phrases, the history of previous legislation on the same subject, precedents from other jurisdictions, or the record of subjects within the field of two or more committees; for bibliographic memoranda on certain subjects; and for reports or memoranda involving miscellaneous reference work in coöperation with other divisions of the library. There were some seventeen of the last described. Practically all were pertinent to questions before or likely to come before Congress, even if not involved in legislation actually pending.

This summary indicates the range of the work but not its dimensions; for while some of the inquiries could be answered in an hour and a single typewritten page, others required several weeks of research and a statement covering fifty pages.

A detailed list of the subjects dealt with is not feasible here. An examination of it would be suggestive as indicating how far the actual demands upon the service have justified the apprehensions expressed. Of demands purely personal to the legislator the number has been surprisingly small, at most three or four. All of the others, if not related to legislation actually pending or in prospect, did relate to matters of proper concern to a legislator: the analysis or interpretation of particular statutes, or of statutes dealing with certain subject matter, in which a member of Congress might have a justifiable interest. Of this description were, for instance, the various demands for the State laws on various subjects. Of major importance in themselves and most distinctive in the service required were the questions involving foreign or international law. These alone would have required a service such as this. The number of them, small during a single short session, must of course increase with the increased participation of the United States in the affairs of the world; and the inevitable participation of Congress and of individual members of Congress in the discussion and determination of the attitude of the United States upon these affairs. This latter participation creates a situation here not paralleled in any country with a responsible ministry. In such a country it may be sufficient that the ministry shall be informed; in ours the minority as well as the majority, and each member of both minority and majority is entitled to be. Where there is a responsible ministry the information is supplied by experts who are part of the permanent executive establishment. In our case the initiative in legislation may be taken by a single member of Congress; the legislation may even be carried through in opposition to

the administration. And the data required, even if in the possession of the executive, may not be seasonably available. It is important that they should be in the hands of the member *before* he takes the initiative, or in any way announce his purpose. An understanding of them may enable him to shape his proposal to better advantage. It may induce him to abandon it wholly. In either case he should have it.

The situation at Washington differs, therefore, from that at a capital where all the initiative is taken by a responsible ministry, and the data required by the minority are employed only for the purpose of criticism.

Prominent during the past session were questions arising out of the war: Exportation of munitions, the military and naval expenditures of various countries (including the United States) during the past quarter century; transfer of flag; contraband; exportation and destination of copper; protest; suppression of liquor traffic; the London conference; neutrality. The discussion of the seamen's bill called for compilations upon the wages of seamen in foreign countries; and that on the ship purchase bill for the legislation of foreign countries in aid or governmental control of a merchant marine. The legislation of Russia on this latter subject seeming especially apposite this section of the compilation was printed as a committee document. It played little if any part in the discussion. In a question so large as the one involved, however, the value of data is not always to be tested by the immediate affirmative use to which they are put.

That much of the data actually quoted in debate went merely to swell the pages of the Record must be admitted; that much was desired and employed for purposes merely "partisan" goes without saying. Both are true of the books called for from the library itself. The compensation is that the data sought for and supplied in this way will be apt to be more accurate than that "fed into the record" without the aid of such a service. The personnel of the staff includes men trained in law and research; its spirit and methods are scientific; its object is to state the facts and (so far as conclusions are ventured) the truth. If the legislator uses only that portion of the facts which will support his argument, that is his affair, as the argument itself is his affair. His opponent has an equal opportunity to secure the opposing facts upon which to base an opposing argument.

The omission from the services as legalised of any provision for bill drafting did not prevent some requests for aid in this. In two or three cases the aid was given; but informally, and merely as the personal suggestion of someone of the staff brought into personal relation with

the legislator. I refer, of course, to the actual final shaping of the bill, expert control of which is so earnestly urged by publicists considering the machinery of legislation. Preliminary aid of various sorts is within the regular scope of the service. It may, for instance, report what is the existing law on a given subject and how this has been construed by the courts, and what rules, regulations and decisions have been made under it by an executive department. In reading through the federal statutes (and in the course of their work they will have read through every one of them, from the beginning to date) its corps of indexers note the "usual form" for any bill, clause or paragraph of common occurrence, also the particular word or phrase employed to effect a certain purpose. These notes are at the disposal of any member. And the material the reference bureau accumulates as part of its apparatus may prove serviceable to him in other ways: for instance in determining whether the administrative features of his bill conform to existing departmental machinery, whether the references to existing statutes are exact, and what existing statutes, if any, should be specifically mentioned in the repealing clause.

Such service would be merely auxiliary. The member still determines what is to be carried by the bill, and he draws the bill. The proposal to provide Congress with a corps of expert "bill drafters" continues to arouse opposition and some resentment: the extreme of which was expressed by one senator who declared that a senator who couldn't draw a bill ought to give up his seat. On the other hand our legislative service was criticised on the floor of the House on the very ground that instead of drafting bills it merely made "compilations."

The opponents admit that bill drafters may be useful to the state legislators; but the members of Congress are, they point out, men of larger caliber, more mature and more experienced. Most of them are lawyers. Nor is it important, they say, that the bills introduced be properly drawn, as ninety-nine one-hundredths of them fail on their merits and never get beyond a committee; while those of them which are actually reported have been threshed out in committee, and will later be threshed out further on the floor by skilled parliamentarians eager to take advantage of every error in form as well as of substance.

On the whole the situation as to bill drafting at Washington seems to be this: that a certain number of members of each House, experts in legislation, do not need the service; others might profit by it, but do not desire it; and the rest desire it very keenly. The last group include many men of experience and legal training. They would not admit

themselves incompetent to draft a bill, if that were their only business; but they recognize that in their absorption in the substance of a measure, they may very possibly overlook some defect in the form, which might appear to a critic considering merely the form: and they would not imperil the substance by a defect in the mere form. They would take no chances.

Obviously federal statute-making could not lose, and it might gain, by the service to Congress of a corps of experts who would at some stage consider the structure and phraseology of bills in the same way as do the parliamentary counsel in England. But the stage at which their aid might profitably be invoked would be when the bill is otherwise ready to come out of a committee, and again before its final adoption by either House. Such a corps would utilize the resources of the legislative reference bureau, but it need not form part of it. The library itself has recommended that if established it be attached directly to Congress, as part of the legislative establishment.

Meantime the appropriation for legislative reference work proper has been continued for another year under a phraseology amplified and made general as follows:

"Legislative reference: To enable the librarian of Congress to employ competent persons to gather, classify, and make available, in translations, indexes, digests, compilations, and bulletins, and otherwise, data for or bearing upon legislation, and to render such data serviceable to Congress and committees and members thereof, \$25,000."

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Civil Service Legislation—1915. The changes in civil service laws proposed or enacted during the session of 1915 by the legislatures of the several States, present one of the most interesting problems of the practical operation of the governmental system of this country. Prior to January 1, 1915, civil service laws regulating the appointment to public office of State employees had already been placed on the statute books of New York, Ohio, Massachusetts, New Jersey, Connecticut, Illinois, Wisconsin, Colorado and California.¹

¹ This list does not include the civil service laws applying to cities, counties and other sub-divisions of States. For more complete list and review of the then existing civil service laws see *National Municipal Review*, vol. 3, no. 2, April, 1914.

In the two first named States, the principle that public employees should be selected on the basis of merit had been embodied in the State constitution.

Nearly every State in which the electorate have been given an opportunity to vote for or against the merit principle, the choice of the people has been registered as being largely in favor of the enactment or adoption of civil service laws.²

It would therefore seem that the principle that public officials should be selected under the merit system had become firmly entrenched and was generally supported by public opinion in numerous representative States extending across the entire continent.

The legislation enacted in 1915 in the States in which changes have been made in laws bearing upon civil service matters—Connecticut, New Jersey, New York, Ohio, Colorado and Kansas—is not inconsistent with this conclusion. In no instance has the existing civil service system been completely repealed at the 1915 session of the legislatures. Nevertheless, of these five States, in New Jersey alone has there been any distinct advance in the present year in strengthening the existing civil service laws. In New York the only change has been to make an extension of the period of provisional appointments from two to four months, a change of such minor importance that it may be dismissed without further comment. In the remaining three States, Connecticut, Ohio and Colorado, drastic changes have been made in the civil service laws, the result in each instance being to weaken in marked degree the force of the law as a barrier between the office holders in the classified service and the political pressure of forces seeking to gain control of the spoils of office.

When we bear in mind the widespread public opinion in favor of the merit system, the manner in which the changes in the law have been

² For example, the several amendments strengthening the Colorado civil service law were adopted by the "initiative" on November 5, 1912, by vote of 38,426 as against 35,282; in Illinois the following "Public Policy Question" was submitted to the vote of the people on November 8, 1910: "Shall the next general assembly extend the merit system by the enactment of a comprehensive and adequate state civil service law thus permitting efficiency and economy?" The vote was 411,676 in the affirmative and 121,132 in the negative. In Ohio on November 6, 1912, the people approved by a majority of more than 100,000 the constitutional amendment incorporating the merit system in the fundamental law of the State. Twelve municipalities and counties of New Jersey have voted on the question of extending the state civil service law so as to make it applicable to local officials. The total vote in favor of the law has been 140,773, against 83,204.

effected becomes significant. In each State there is still a so-called civil service law, although its character seems to have been greatly modified. In each of these three States, Connecticut, Ohio and Colorado, representing different parts of the country, the effect of the legislation of 1915 has been to emasculate rather than to abrogate the existing civil service system.

The apparent result in each case has been to enable the party returning to power in the elections of 1914 to obtain fuller control over appointments in public office than would have been possible under the then existing civil service statutes. The same result has been obtained in the three States in three different ways. A comparison between these presents an interesting illustration of the operation of the governmental machinery of this country.

The original civil service law of Connecticut enacted June 6, 1913, established a civil service commission of three members holding office for the term of six years, whereby the governor could appoint a new member only every alternate year and could not ordinarily obtain control of the commission until toward the expiration of his own term of office. The object of the law, according to its stated purpose, was to provide "means for selecting and promoting every official and employee in the classified service upon the sole basis of his proven ability to perform the duties of his office or employment more efficiently than any other candidate therefor." The law itself applied to nearly all subordinate employees of the State. It had been passed unanimously by a legislature controlled by the Democratic party following the election of 1912, and the original commission consisted of two Democrats and one Progressive Republican.

On March 1, 1915, this law was reconstructed by a Republican legislature. By a series of amendments, the commission has been increased from three to five, thereby permitting the immediate appointment of two new members. The purpose of the law has been altered so that instead of being strictly competitive, it is stated to be "to provide assurance that the election and promotion of every official and employee in the classified service shall be determined in reference to his qualifications and ability to efficiently and satisfactorily perform the duties of his office or employment." Instead of the three highest names alone being certified for appointment, the revised law empowers the commission to submit "such number as it may determine of the names of those whose rating discloses requisite ability to properly perform the duties of the office for which civil service test has been held." Furthermore

each elected official is given unrestricted power to determine whether the law should or should not apply to the subordinates in his office or department. Even where the law may be applicable, it is provided that the examinations for office need no longer be required to be competitive. In addition, the governor is given complete power to "approve, disapprove or reverse the whole or any part of the action of the commission" in reference to "any rule, classification, exemption or refusal to examine." Finally, the provisions have been abrogated, in the former law that prosecutions for violations of the act should be made at the instance of any one of the members of the civil service commission.

In other words, by these amendments, operation of the whole law has been made optional with the appointing officer, non-competitive examinations are allowed, the door has been opened wide to allow the appointment of any name anywhere on the eligible list, the foundation has been laid for turning a minority of the commission into a majority by the naming of two additional colleagues, and, to make assurance doubly sure, the governor has been given an unqualified power to reverse any action of the commission, involving the exemption of any person from the civil service system.

Parallel legislation was enacted at the same time in the State of Colorado, where a situation substantially similar had developed. On March 30, 1907, a Republican legislature enacted the original civil service law of that State. Thereafter the Democratic party became the dominant one in the State and during its period of control, certain amendments to the civil service law were submitted to the vote of the people and were adopted by the "initiative" vote of the people in November, 1912. In 1914 the Republican party came back into power and on April 10, 1915, a new civil service law was enacted to take effect July 10, 1915. By its provisions the existing civil service commission is legislated out of office and provision is made for the immediate appointment of an entirely new commission. All existing eligible lists are forthwith "declared to be null and void and of no force and effect." While the old commission of three members held office as in Connecticut for terms of six years so that one vacancy would occur only every second year, the new law provides that all three members shall serve only from the date of their appointment "until the expiration of the term of office of the governor making said appointments." The prior law required that the person whose name stood highest on an eligible list should alone be certified for appointment. This has been modified so that the selection

may be made from among the three names highest on the list. Another change consists in the enlargement of the group of persons exempt from the provisions of the act.

In passing it may be noted that in three particulars amendments adopted by the vote of the people in 1912 were repealed by the legislature in 1915 and the original text of the law of 1907 substantially restored. The provisions which have thus been abrogated were as follows: (1) The prohibition as to the political activity of office-holders; (2) a penalty heavier than formerly established for the false certification of pay-rolls; and (3) a section automatically providing for the annual appropriation for the purpose of carrying on the work of the civil service commission, thus freeing the commission from the necessity of a perennial legislative vote of supplies.

In Ohio the legislative changes enacted at the session of 1915 resembled those made in Colorado in that the existing civil service commission was legislated out of office and in that the exempt class was broadened so as to take numerous positions completely out from under the civil service law. The distinctive feature of the Ohio process of permitting new political forces to obtain the spoils of office has been to oust all state employees, some 8000 in number, who have taken non-competitive examinations. Such persons, however, may be retained as provisional appointees.

In the State of New Jersey, six minor amendments were enacted in the session of 1915 to the existing civil service law. The most important was the act of March 30, 1915, chapter 120, which provided for a summary method, whereby any citizen upon "presenting a petition to one of the judges of the supreme court of this state" may "cause a summary review of any (alleged) illegal or unlawful action" in reference to the civil service law. The other amendments were as follows: The placing of road inspectors under the civil service system; permitting the selection of laborers from lists prepared by relief committees; regulating the method of submitting to the vote of the people the question whether the civil service law should be applied to particular municipalities; providing that persons in office when a city should adopt the law, should be considered to be temporary appointees; and finally, providing a summary procedure to compel officials properly to submit to the vote of the people the question whether the law should be locally adopted.

The State of Kansas adopted a state civil service law providing for a state commission, classifying the state service and providing for tests

of fitness for appointment to positions. The new state commission is to be composed of one member of the faculty of the state university, the state accountant and the third an officer or member of a state board to be designated by the governor. Following the usual classification, the law exempts officers elected by popular vote, commissioned officers appointed by the governor, officers and employees of the legislature, election officers, heads of departments, members of commissions and boards, officers and persons in the militia, officers and employees of the state printing department, appointees of the courts and judges, assistants of the constitutional executive officers, all unskilled laborers, the heads and professors of state educational institutions. The commission is authorized to exempt one secretary or clerk of each department or of each executive officer, officers of state institutions who are required to be physicians and employees of special commissions of the legislature.

The commission is authorized to make such rules for the conduct of examinations as they may deem fit and to prepare eligible lists for the appointing authorities. One provision fixes the term of office of all appointive state officers, not otherwise fixed, at four years and prior to the expiration of the term, the civil service commission is to make an investigation of their efficiency and fitness for office and approval shall cause such officer to be reappointed.

The large exempt list indicates that the act will not apply to very many positions. The commission is allowed only \$1000 to carry on their work.

Among the unsuccessful civil service laws proposed in the several states at the session of 1915, House Bill No. 716, introduced in the legislature of Illinois, is worthy of comment. This bill would have applied to counties of 150,000 or more inhabitants, that is to say, Cook County. By the provisions of this bill the county civil service commissioners could not be removed "except for palpable incompetency, malfeasance in office, or gross neglect of duty, and then only on written charges with specifications and after a member had been heard in his own defence."

The legislative changes enacted and proposed in reference to civil service laws in the several States at the 1915 session of the legislature illustrate the power of the legislature to weaken without destroying the civil service system as a barrier between a triumphant political party and the spoils of office. The unsuccessful measure introduced in Illinois contains a suggestion as to a solution of the problem of government

involved in laws of this type. If a commission, when appointed to office, could be made secure in its tenure, the civil service system of selecting the government employees according to merit could be at least partially protected against such attacks as were successful in Connecticut, Colorado and Ohio.

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Administration of Mothers' Pension Laws. In the effective execution of the various mothers' pension laws and the judicious and equitable administration of the funds appropriated and designed for the partial support of indigent mothers with dependent children, it has, of course, been imperative to utilize appropriate existing agencies or to create new institutions to discharge the functions and obligations created by the terms of the acts. Moreover, to accurately define the limits within which the activity of these agencies may be legitimately exercised in order to adequately realize the spirit and purpose of this new experiment, it has likewise been necessary to accurately define the procedure, a strict compliance with which is indispensable to obtain financial relief, to prescribe the conditions under which relief may be granted, to designate the funds out of which gratuities are paid, to fix the amount of the allowance, and to discourage fraud in obtaining and heedless profligacy in expending allowances by investigations and periodical visits of inspection.

The agencies by which the various mothers' pension laws are administered may, for convenience, be divided into two classes: In 17 States the law is administered by the juvenile court, where one exists, or by the county, district or probate court, functioning as a juvenile court. In all the other States the execution of the law is intrusted to a quasi-judicial or administrative board. Among these latter States, the law is administered in California by the state board of control, assisted by three children's agents, having state-wide authority, and by an advisory committee of three persons in each county; in Massachusetts, by the city and town overseers of the poor, under the supervision of the state board of charity; in New Hampshire, by the county commissioners, upon recommendation of the school board of the district; in Pennsylvania, by an unpaid board in each county, appointed by the governor, and consisting of not less than five or more than seven women; in Kansas, by the board of county commissioners; in the city of St. Louis, by a non-paid board of children's guardians, consisting of

seven members, appointed by the mayor, with the approval of the council; in the State of New York, under the terms of the recently enacted law, by a local board of child welfare in each county, consisting of seven members, one of whom is the county superintendent of the poor, ex-officio, and six others, two of whom are women, appointed by the county judge; and in New York City by a board consisting of the commissioners of public charities, ex-officio, and eight other members, at least three of whom must be women, appointed by the mayor; the state board of charities has general supervision of the work for the entire commonwealth.

An analysis of the functions, character and composition of these agencies discloses certain prevalent characteristics, conspicuous among which are the economy effected by the utilization of existing institutions for the administration of the laws; the lack of centralized control and the gratuitous services of the members of the newly created boards. Pennsylvania, St. Louis and New York are the only States and cities in which distinct administrative bodies have been created to administer the laws and in all cases the members are unpaid. The only States in which the local boards are amenable to a central authority are California, Massachusetts, New York, New Jersey and Wisconsin. In California, the state board of control has direct supervision; in Massachusetts, a detailed statement of expenses is rendered to the state board of charities which also supervises the work and makes the necessary rules and regulations; and in New Jersey before a hearing on a petition is had, the state board of children's guardians examines into the truth of the statements set forth in the petition and reports to the court and when aid is granted the mother and children are committed to the custody of the board; in New York, general supervisory power is vested in the state board of charities; and in Wisconsin, by reason of the state aid granted, the board of control has a limited power of supervision.

The administration of the law is further hedged about by certain statutory restrictions which the executory agencies are legally bound to observe. These restrictive provisions relate to the eligibility of the mother to receive aid, the express conditions upon which relief is granted, and the age of the child upon the attaining of which public subsidies automatically cease. Practically all of the laws provide that before aid is granted the mother must be physically, mentally and morally fit to rear her children; the support of the husband must be removed either by reason of his death, permanent incapacity for work because of physical or mental infirmity or incarceration in a detention institution; the

mother must be an actual resident and must live with her children; financial aid must actually be imperative to save the children from neglect and enable the mother to properly care for them; and in practically all cases the sources of financial income are rigorously inspected to determine the economic dependence of the mother and children.

The procedure in obtaining relief varies rather widely. In general application is either made by a mother who is eligible to receive an allowance or by a reputable resident citizen who may be informed about and interested in the case. When the formal application or petition for relief is filed, the granting of an allowance is preceded by and based on an investigation conducted by an agent or officer of the court or board. The statements made in the application, the actual home conditions and the regulatory provisions enumerated in the law are adhered to and observed in ascertaining the relative destitution of the applicant or petitioner. A written report embodying the results obtained is submitted to the court or board and the investigator is usually present to supply any information demanded or to submit his opinion on obscure and controverted matters. In Illinois the procedure is formal, the mother petitioner and the county board who formally disburse the relief are made parties respondent. In New Jersey, the court examines all who desire to be heard. After all evidence has been heard, weighed and considered the court or board makes an order accordingly.

If the order is in favor of granting relief, the proper fiscal officer of the State, or of the county, town or city appropriates the funds and pays them in conformity with the order. In all the States except California, Massachusetts, Pennsylvania and Wisconsin, the funds necessary to carry out the provisions of the law are paid out of the county treasury and out of money not otherwise appropriated. In Illinois, South Dakota and Ohio these funds are raised by a special tax which in the former State amounts to $\frac{1}{10}$ of a mill on the dollar and in Ohio and South Dakota $\frac{1}{10}$ of a mill. In California \$75 per year is paid by the State, in Massachusetts one-third of the allowance where the recipient has a legal settlement and the whole amount in other cases, and in Pennsylvania and Wisconsin one-half the amount within the limits of the appropriation, which is apportioned according to the population of the counties. In New Jersey, the payments by counties are made through the state board of children's guardians.

In most States, the allowance is paid directly to the mother, either in monthly installments, or at such times and in such amounts as are indicated in the order of the court. In a few States, notably in some

of those which have amended their laws, provision is made for the payment of the allowance to an individual or organization approved by the court in case the mother is found to be improvident, careless or negligent. Several States definitely limit the time to six months during which an allowance continues in force, but such allowances may be renewed and extended for a similar period; in other States, payment continues so long as the original order is not modified. In Massachusetts each case is reconsidered at least once each year.

The amount of the allowance is supposed to be sufficient to enable the mother to properly care for her children or to be equivalent to an amount necessary to maintain them in an institutional home and in each State the amount is definitely fixed. In several States the amount which may be expended is definitely limited. This is fixed at \$12,000 per annum in Missouri; in Pennsylvania, at \$3000 in counties with cities of the first class; \$2400 in counties with cities of the second class; \$1800 in counties with cities of the third class; and \$1200 in other counties; and to meet these expenses an appropriation of \$200,000 was made for the biennium of 1913-14; in Utah not to exceed \$10,000 per year in any county; in Wisconsin the amount paid by the State to any county in any one year can not exceed \$1 for each 30,000 inhabitants, and state aid does not exceed \$75,000 per year.

The investigations in most states are conducted by probation officers, agents or visitors appointed by the court or board, and families recipient are subsequently supervised by these same persons. The qualifications of visitors are usually that they shall be discreet persons of good character. In Ohio and Wyoming, agents of associated charities organizations or humane societies are also employed and any person who is employed in conducting such an investigation must be thoroughly trained in charitable relief work.

In Missouri, Ohio, South Dakota and Utah, to prevent the distribution of allowances where they are not actually needed, any taxpayer may file a motion to set aside or vacate an order granting relief. If on the hearing of such motion it transpires that the grant was injudicious and unwarranted, the court or board may discontinue the subsidy.

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Initiative and Referendum—Advisory Vote. The State of Indiana came very near to offering the nation a new experiment in the applica-

tion of the initiative and referendum at the last session of the general assembly. Indiana cannot have the initiative and referendum under the constitution and the possibility of amendment or revision of the constitution has seemed to be remote. The attempt was made therefore, to secure some of the benefits of the system of direct legislation under existing constitutional restrictions. For that purpose the method applied in the nomination and election of United States senators prior to the change in the federal constitution was suggested. The proposition consisted of a series of pledges which each candidate for the general assembly might sign or refuse to sign. To submit a proposition to the people required that 10 per cent of the qualified voters should petition therefor requesting that the proposition petitioned for should be submitted to the vote of the people at the next general election. It was provided that the ballot be prepared in such form as to permit the substance of the subject presented to be placed at the top in not to exceed twenty-five words and underneath the following question: "Shall the general assembly pass a law substantially as stated above?" The voter might indicate his preference by marking in the square opposite the words "Yes," or "No."

It was provided that the returns of the vote should be made in the same form as the votes at the general election and the secretary of state should lay the returns received by him before the next general assembly and certify the vote thereon. Following the forms used in the election of senators, each candidate under the bill, could sign one of three statements as follows:

STATEMENT NO. 1

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I will always vote for any proposition which has received a majority of the votes cast thereon at any general election preceding the regular session of the general assembly to which I may be elected without regard to my individual preference.

_____,
Signature of the candidate for nomination.

or

STATEMENT NO. 2

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I will always vote for

any proposition which has received a majority of the votes cast thereon in my legislative district preceding the regular session of the general assembly to which I may be elected without regard to my individual preference.

_____,
Signature of the candidate for nomination.

or

STATEMENT NO. 3

I further state to the people of Indiana as well as the people of my legislative district that during my term of office, I shall consider the vote of the people for or against any proposition presented to them as nothing more than a recommendation which I shall be at liberty to wholly disregard if the reason for doing so seems to be sufficient.

_____,
Signature of the candidate for nomination.

These statements were to be filed with the secretary of state and become a matter of public record. This bill, which would have made it possible to put certain large questions such as the calling of the constitutional convention, the liquor question, and woman's suffrage up to the people and secure the pledges of members, almost passed the general assembly. It went through the Senate without opposition but the lateness of its report in the House prevented it from finally being passed.

Judicial Elections. Illinois passed a new act providing that the names of all candidates for judge of all courts of record in the State are to be placed upon a separate and independent ballot entitled "judicial ticket." It is expressly provided that in all other respects the ballots shall be like the ballots for other candidates at the election. This would seem to indicate that while the ticket will be separate, party designations may still remain.

Distribution of Legislative Bills. The State of New Mexico provided for wider state publicity of bills presented at the last session of the general assembly by directing the publication of all bills, resolutions and memorials introduced in either house and by requiring that a copy of each bill be delivered to the members of the legislature and to the newspapers, to the state educational institutions including the state university and state normals and to not exceeding five persons whose

names and addresses might be furnished by a member of the legislature. Slight provisions have been made of a similar character in other States.

State Banking Board. Hereafter in Indiana all organizations proposing to do a banking business or to engage in conducting savings banks or trust companies must make application to a charter board consisting of the governor, the secretary of state and the auditor of state. The charter board is required under the act to make examination of financial standing and character of the incorporators, organizers or partners, also of the public necessity of the business in the community in which it is sought to be established. If their report is unfavorable, a charter may be refused. A confusing amendment was carelessly inserted which provided that if the applicants will guarantee the deposits the charter board must grant the charter. No definition of the requirement to guarantee the deposits was made and the whole matter is left somewhat indefinite. Heavy penalties are attached to the conduct of the business without the approval of the charter board. The board is authorized to appoint investigators for the purpose of making investigations.

Commission and City Manager Government. Developments relating to the commission and city-manager form of municipal government during the last few months have not been striking. About the usual number of cities have rejected or adopted these schemes. Commission government was adopted in Jackson, Tenn., Asheville and Lincolnton, N. C., Yoakum, Texas, Huron, S. D., and Hoboken, N. J. In both Asheville and Hoboken the contest has been bitter and there have been previous attempts to change to the commission plan. Durham and Elizabeth City, N. C., and Sherman, Texas, have chosen the city-manager form, while Wilmington, Charlotte, and Burlington, N. C., and St. Augustine, Fla., have rejected it. Commission government failed of adoption in McMinnville, Tenn., and in Avon, N. J. Tucson, Ariz., has a city manager, the Republican party having pledged itself to this policy. Although the mayor and council retain the legal power to make appointments, they have promised not to exercise it save upon recommendation from the city manager. A vote in favor of charter revision in Grand Rapids has been passed and the charter commission elected. By a majority of about 2000 it was voted to use the Dayton city-manager charter as a basis for the new draft. In New York State, Saratoga Springs and Mechanicville have adopted commission government as provided in Plan B of the optional charter law, and Newburgh

is to follow Plan C and have a city manager. The city of Cohoes has rejected both Plan B and Plan C and will keep for the present its board of six aldermen as provided in the charter given it by the last legislature.

A list of short-ballot cities, containing those operating under the city-manager plan as well as under commission government, is printed in the *Municipal Journal* for May 20. The list is that published by the National Short Ballot Organization, corrected to January 26, 1915, with the additional cities which have adopted these forms to the end of April. According to this compilation 371 cities in the United States are administered in this way, or approximately 9 per cent of the population of the country. Fourteen of these cities have more than 100,000 inhabitants, the largest being Buffalo. *The American City*, in its June issue, contains a good deal of information on the working of the city-manager plan. Briefly summarized the more important charter provisions and related facts are given for forty-five cities who have a city manager.

In several States general bills have been drawn up relating to the commission and city-manager plan. The optional charter bill in Massachusetts has become a law. In Iowa the McFarlane bill enables towns and cities in the State to adopt the commission-manager form, although it does not create a powerful office, the city manager being a sort of superintendent of public works. Last February a bill was introduced in Indiana providing an optional commission or city-manager charter law of the orthodox variety. A bill, likewise, is before the Missouri legislature to permit the adoption of the commission-manager charter, and, in the event of its passing, courses will probably be given at the University of Missouri to afford training for municipal executives. The Kansas legislature has passed a bill which concerns commission government in all first-class cities which have less than 18,000 inhabitants. In such cities the number of commissioners is reduced to three, counting the mayor as one. His duties are to have charge of the police, fire and health departments; the finance commissioner prepares the budget, collects all revenues and manages city funds; the commissioner of streets and public utilities is the third commissioner. The duties of these officers are thus made the same as those in second-class cities.

Already a city manager has come to grief: in Phoenix, Ariz., that officer has been tried and found guilty of incompetence, extravagance and inefficiency, and has been removed by the city commissioners. A new city manager has been appointed but, owing to his unwillingness to

accept dismissal by the commissioners, the ousted officer for some time prevented the new incumbent from assuming his duties. This state of affairs was remedied, at least for a time, through an affirmation of the commissioners' action in response to an appeal to the superior court. A further appeal from this decision has, however, been made. A recall petition was also started to remove the mayor and two of the commissioners.

A. M. H.

Fixing Responsibility for Fires. In the matter of fire-prevention Commissioner Adamson of New York City is leaving no stone unturned in the effort to make property owners realize their responsibility in taking every precaution against the possibility of fires through carelessness or negligence. For one thing, the outcome of a test case brought by the fire commissioner against the owner of factory buildings where the automatic sprinklers ordered by the fire prevention bureau had not been installed, has finally been decided in the city's favor and the factory owner has been ordered by the appellate division of the supreme court to pay the costs of extinguishing the fire. This is the first case of its kind ever brought by New York City and was first decided in favor of the defendant by the lower court. It was appealed by Commissioner Adamson and the decision unanimously reversed by the higher court. This established the principle that the cost of fire-extinguishing in cases of willful negligence in disobeying fire laws or the special orders of the fire department relating to fire-prevention measures, must be paid by the guilty persons when these occur on their premises, as well as the cost of all loss which neighbors may suffer. Mr. Adamson proposes to submit to the next legislature a bill incorporating this new rule and a provision by which a man who has a fire will be regarded as a public enemy rather than an object for sympathy because he has endangered lives and property.

A. M. H.

A useful table is printed in the April issue of *The American City* (page 348) which sets forth the comparative strength and cost of fire departments for the year 1914 in the sixty leading cities of the United States. This compilation for fire departments, as well as one giving corresponding figures for police departments, has been made by Mr. H. A. Stuart, city statistician of Minneapolis.

A. M. H.

Taking Property by Condemnation. A new departure in the obtaining of property for use by a city is the step taken in Los Angeles where the city council has passed a resolution authorizing and directing the city attorney to proceed with the condemnation of that part of the plant of the Southern California Edison Company wanted by the city for the municipal distribution of the electric power to be generated by the Owens River aqueduct water. Under a law recently enacted the State railroad commission is empowered to conduct such proceedings and to fix the price for utilities taken over under condemnation—a great saving of time as compared with the former necessity for impaneling a jury and trying such a case in a court of law. The price determined by the commission is to be paid out of the sale of bonds to the amount of \$6,500,000 which have been voted for a distributing system.

A. M. H.

Joint Civic Enterprises. Three small cities in Illinois—La Salle, Peru, and Oglesby—which are included within a six-square-mile congressional township, have combined for a civic center which is being built around one high school. This result came in 1898 after a struggle lasting several years to overcome the jealousy among the three municipalities. The other buildings included in the group are an assembly hall, a manual training and domestic science building, a gymnasium, and a hygienic institute. This latter represents another step in coöperation; that is, the substituting of a central, efficient and well-equipped health office for the three separate health officers who had formerly performed the work somewhat perfunctorily. Another coöperating agency is the infant welfare station. This tri-city center has been achieved through private generosity in coöperation with the final authority administering the township high school and the city councils.

A. M. H.

City Planning—New York. In the interest of city planning two advisory commissions have lately been appointed in New York City by the board of estimate and apportionment. The advisory commission to the city planning committee of the board is designed to correlate the work of all municipal agencies which are in any way concerned with the physical development of the city, and will, in addition, consider plans for definite local improvements which may be recommended by the borough authorities. The other advisory commission is that recommended by the heights of buildings commission in its report and is

to serve in arranging building districts and appropriate regulations and restrictions to be enforced in each. These commissions will work under the same office staff and every effort will be made to prevent duplication of work and to coördinate all schemes in developing a city plan.

A. M. H.

Municipal Ice Plants. A little more than a year ago there was only one municipal ice plant actually operating in the United States; now, however, there are several and all report such favorable returns and results that the field of ice manufacture and sale appears to be promising for municipal enterprise. In addition to the plant at Weatherford, Okla., there are at present establishments at New Britain, Conn., Lafayette, Ala., and Fernandina, Fla., with one in process of building at Mayo, Fla. Reports from these places show reductions in cost to consumers and good quality of ice provided. Furthermore, active measures are being taken towards similar undertakings in other places. Under the auspices of the League of Kansas Municipalities the effort is being made to secure from the legislature of the State a grant of power which will permit municipalities to establish and operate ice plants. In Illinois, as well, a measure to allow cities and villages to establish markets and to acquire or build ice houses for supplying ice to their inhabitants is to be submitted to the legislature in order to remove the constitutional obstacles in the way of such an undertaking in Chicago. Several attempts towards municipal ice-making have been made in New York City, but none has been put through. Akin to this activity is another which is urged for New York City—a municipal cold storage plant, not only for dealers, but for householders as well. Such a facility is already provided in Cleveland in connection with its new municipal market. Here refrigeration is supplied to marketmen and cold-storage space is rented to commission merchants and to householders. Thus it is possible to buy at the municipal market any amount of provisions, when they are cheap and plentiful, and store them there for a nominal charge, to be used when prices have risen.

A. M. H.

Purchasing Department. Pending the passage of the bill to establish a central purchasing agency for New York City, purchase of supplies is being undertaken by the mayor's central purchasing committee appointed last November. Should the bill, which was introduced by Mayor Mitchel, fail to become effective, the present committee will be

allowed, for the present at least, to contract for all supplies, materials, and equipment needed by the departments, bureaus and offices which come under the supervision of the mayor and of any others who wish to coöperate. The committee's chairman is City Chamberlain Bruère, and with him are associated departmental representatives who have had experience in purchasing. These latter are divided into sub-committees, each of which is responsible for the preparation of the contract schedule of a specific department, and acts in an advisory capacity on all matters relating to the purchase and handling of the supplies of its particular department. Already contracts have been made for a good many of the larger quantities of articles and have insured a considerable saving of money to the city, as, for example, in the case of the contract to supply three million quarts of milk to various departments during the six summer months at a reduction of over \$30,000 as compared with the last prices paid.

A. M. H.

Regulation of the Jitney Bus. In this connection a word might be said on the progress of this mode of transportation—the jitney bus. We read of its regulation throughout the land, in El Paso, Texas, Rochester, N. Y., Tucson, Ariz., Washington, D. C., Annapolis, Md., Denver, Colo., Superior, Wis., Warren, R. I., and in the cities of Tennessee. It has resulted in a lowering of street-car fares in Vincennes, Ind.; the street railway company in Paducah, Ky., and in Springfield, Mass. has been obliged to reduce its expenses in order to offset the cut in profits due to jitney busses, in the latter case by a reduction in salaries paid to employees; while in Harrisburg, Pa., and in Richmond, Va., the street railway company has itself undertaken to operate jitneys. State-wide jitney bills have been killed by the Massachusetts and by the Pennsylvania legislatures. In Philadelphia the six hundred cars in its jitney service have been placed under police protection and supervision in order to relieve traffic congestion. Order and temperance in the use of the jitney bus are fast becoming the rule, however, and this chiefly by forcing out drivers who cannot provide themselves with a substantial bond. Bonds vary in amount: in Little Rock, Ark., operatives must furnish a bond of \$2000; in Louisville, Ky., \$5000; and in San Diego, Cal., the amount is \$10,000. Jitney busses first made their appearance in Vancouver, British Columbia, in January, 1915. Two months later there were over three hundred and fifty operating, and the Vancouver Auto Public Service Association was formed shortly afterward. Considerable opposition is encountered in Vancouver, however, because

the decrease of 1,138,333 passengers on the street railways in one month has cut deeply into the profits of the company and those turned over to the municipal government by the company have been diminished by about one-third their usual size.

Along this line it is interesting to note, from the report of the London traffic branch of the board of trade, the activity of motor busses in London. During the year 1913 they carried 734,000,000 passengers, or nearly twice as many as in 1910, and within 90 per cent of the number carried by the street cars and nearly 60 per cent more than by the local steam railroads. In 1913 there were over 3600 omnibusses licensed and of these only 142 were drawn by horses. Although during the ten-year period, 1903-1913, the number of busses licensed had increased by only about twenty-eight, yet the number of passengers carried had grown by about 250 per cent, and the mileage traversed was nearly three times as great.

A. M. H.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

Dr. Clarence E. Ayres has been appointed instructor in social science in Amherst College. He will give part of his time to assisting Prof. Raymond G. Gettell in the department of political science.

Prof. J. M. Mathews has been obliged by the press of other duties to resign his editorial charge of the department of News and Notes of the REVIEW. Prof. Charles G. Fenwick, of Bryn Mawr College, has been appointed to fill his place, and also succeeds Professor Mathews upon the board of editors of the REVIEW.

Raleigh C. Minor, professor of international law at the University of Virginia, is lecturing this summer in the summer law school of the University of California. Professor Minor expects to publish this fall a volume on World Federation.

Prof. Herman G. James, of the University of Texas, is to give two courses, "American City Government" and "European City Government" at the University of California during the summer session. Prof. Victor J. West, of Leland Stanford University, is to give two further courses, "Introduction to Political Science" and "Political Parties" during the same session.

Prof. Edward Elliott, formerly dean of the college and professor of political science at Princeton, has accepted engagements at the University of California as lecturer in political science and jurisprudence. He will give a course in "International Law" throughout the year; undergraduate courses, "Introduction to Political Theory" and "American Political Institutions;" and a graduate course, "Theories of the State."

Mr. A. C. Hanford, of the University of Illinois, has been appointed assistant in political science at Harvard University.

Mr. R. E. Cushman, of Columbia University, has been appointed instructor in political science at the University of Illinois.

Prof. O. C. Hormell, of Bowdoin College, will give courses in the summer school in the University of Illinois this year.

Prof. William E. Hotchkiss, of Northwestern University, has been appointed acting professor of political science at Leland Stanford Junior University for the year 1915-1916.

Prof. A. T. Prescott, head of the department of political science at Louisiana State University, will conduct the classes in political science at the approaching summer session. Dr. M. L. Bonham, Jr., associate professor of history and political science, will give the courses in history.

Dr. Walter L. Fleming, head of the department of history at Louisiana State University, will give courses at the George Peabody Teachers' College during the approaching summer session.

At Louisiana State University an innovation is being tried in the courses in political science. Each year a course is offered in comparative government, known as "Political Science 12." For the session of 1915-16 it will be known as 12a, and will deal with governments of the leading countries of continental Europe. In the session of 1916-17 it will be known as 12b and will consist of a study of "the political systems of the principal Latin-American countries, the leading Oriental nations and the most important self-governing colonies." 12a will be based on a text, but as none is available for 12b, the students will be expected to do more collateral reading.

Associate Professor J. S. Young, of the department of political science of the University of Minnesota, has been raised to the rank of professor.

Dr. Quincy Wright, of the University of Illinois, has been appointed Harrison fellow in political science at the University of Pennsylvania.

Dr. Lindsay Rogers, of Johns Hopkins, has been appointed adjunct professor of political science at the University of Virginia.

N. E. Oglesby, of Dublin Institute, Virginia, has been appointed assistant in political science at the University of Virginia for the session of 1915-16.

T. R. Snavely has been awarded the Phelps-Stokes fellowship in the department of economics and political science at the University of Virginia.

Plans have been completed at the University of Virginia for beginning a new school in government, public law and business. The courses will be offered next session. Prof. Thomas W. Page, head of the department of economics, will have charge of the new department and will personally give some of the courses.

D. Hiden Ramsey, who was assistant part of this session in the school of economics and political science at the University of Virginia, has been elected commissioner of public safety under the recently inaugurated commission government at Asheville, N. C.

The University of Virginia summer school is offering this session for the first time courses in international relations, as well as courses in the history and government of South America.

William M. Hunley, adjunct professor of political science at the University of Virginia, has accepted appointment to the chair of political science and economics at the Virginia Military Institute.

The annual meeting of the American Bar Association will be held this year on August 17-19 at Salt Lake City, Utah.

The Ninth Annual Conference of the National Tax Association will be held at San Francisco, August 10-14, 1915. Much importance attaches to this conference this year in view of the widespread and increasing interest shown in the subject of national, state, and local taxation. A feature of interest will be the report of the committee on the federal income tax of which Prof. E. R. A. Seligman is chairman. The coöperation of the treasury department is expected in the discussion of this report which will aim to suggest points where amendment may be

made to secure better administrative results and remove objectionable features.

Another important report will be that of the committee on increase of public expenditures of which Dr. T. S. Adams of the Wisconsin tax commission is chairman. A concise, carefully devised plan for checking waste and introducing economies in fiscal affairs will be discussed. Unusual efforts will be made to secure a full and complete discussion of the various practical problems which confront the state taxing officials. Judge Oscar Leser of the Maryland tax commission will have charge of this session which will be participated in by officials from many States. Naturally the interesting and important experiments and developments in taxation in California and the far western States will be featured for the benefit of the visitors from the east. Numerous special topics of interest will be discussed, including classification of taxable subjects, efficiency in the collection of taxes, taxation of car companies, tax limit laws, valuations of corporations by public service commissions. The report of a committee on situs of intangible property will present the latest thought on that important subject. The usual review of legislation in the various States by M. M. Flannery of the federal trade bureau will be of particular interest in view of the large number of legislative sessions held this year. A study of the meaning of recent action on constitutional amendments will be an instructive feature. The conference will extend over five days with sessions so arranged that time will be given for visiting the exposition. The annual meeting of the American Economic Association will take place during the same week and a joint session has been arranged with that association for the discussion of the federal income tax. The conference is composed of members of the association and official delegates appointed by the executives of the various States and the Canadian provinces, presidents of universities and associations of chartered accountants. Prof. E. R. A. Seligman of Columbia University is president of the association; S. T. Howe, chairman of the Kansas Tax Commission, vice-president, and T. S. Adams of the Wisconsin Tax Commission, secretary.

Under Democratic auspices, the Connecticut legislature of 1913 enacted a thorough-going civil service law applicable to state positions and placed its administration in the hands of a commission of three members. Governor Baldwin appointed as members of this commission two Democrats and one Progressive. The Republican legislature of 1915 has amended the law so as to enlarge the commission to five,

avowedly in order to have the Republican party represented thereon. Other amendments have, in the opinion of civil service reformers, seriously weakened the law by virtually leaving it optional with elective officers and other officials having appointing power whether they will bring their subordinates into the classified competitive service or place them in the exempt class. The governor is also given power to "exempt from any of the provisions of the civil service law any department, board, or commission, or employee or group of employees in the classified service" The provision in the original act relating to removals in the classified service has been one of the principal points of attack, since all removals had to receive the approval of the civil service commission. This requirement has now been stricken out, and henceforth appointing officials have the right of removal, but must file reasons for each removal and furnish the person with a copy thereof; but no examination of witnesses, trial or hearing is to be required.¹

The trustees of the Cincinnati Bureau of Municipal Research have elected Mr. H. F. Morse, director, to succeed Mr. Rufus E. Miles, who is now in charge of the Ohio Institute of Public Efficiency at Columbus. Mr. Morse was previously employed by the city in making a survey of the city sewer system. Mr. C. B. Galbreath, former librarian of the Ohio State Library, has been reelected to this position in the place of John H. Newman. Mr. Galbreath is also in charge at the present time of the Legislative Reference Bureau.

The Ohio Municipal League held its annual meeting in Columbus, February 11-12. The following officers were elected: E. G. Martin, president; Stewart L. Tatum, first vice-president; Thomas L. Coughlin, second vice-president; Henry M. Waite, third vice-president; S. Gale Lowrie, fourth vice-president; F. W. Coker, secretary-treasurer.

The league's meetings were given over chiefly to the subject of municipal taxation, and at the same time a tax conference was called representing the various cities and the civic organizations of the state. Committees were appointed to endeavor to secure legislation which would provide greater revenue for municipalities and propose a constitutional change which would exempt municipal bonds from taxation and provide a limited form of home rule in taxation.

The Proceedings of the Tax Conference and Fourth Annual Meeting of the Ohio Municipal League, have now been published (Columbus,

¹ Contributed by P. O. Ray.

1915, pp. 76). Among the papers are "Home Rule in Taxation," by Newton D. Baker, and "Constitutional Restraints upon the Taxing Power," by Lawson Purdy. The secretary of the league is Prof. F. W. Coker, of Ohio State University.

On the 27th of May the second annual conference of the League of Oregon Municipalities was held at the University of Oregon. The subjects of the addresses included "Charter Making," "Excess Condemnation," and "City Planning." On the two following days the seventh annual Commonwealth Conference was held, also under the auspices of the university. Among the subjects discussed were "Coöperation between Nation and State in the Control of Natural Resources," "Credit Organization," "County Administration," and "Good Roads Legislation."

Judge James E. Gorman, head of the juvenile branch of the Municipal Court of Philadelphia, has appointed (March, 1915) four expert women to act as assistant judges. They will have charge of all hearings and examinations of delinquent girls below the age of sixteen years, and will submit a transcript of the testimony in each case brought before them to Judge Gorman who will make the final decision in all cases. This is probably the first instance in the Eastern states of the appointment of women to act as assistant judges in the treatment of juvenile delinquents.

From the *First Annual Report of the Municipal Court of Philadelphia*, for the year 1914, it appears that in the nine months during which the court has been in actual operation 39,397 cases were "brought to final disposition." The division having exclusive jurisdiction in domestic relations cases, heard and disposed of 15,300 cases, and "collected on orders made by the court \$345,490.94 "which has been paid to the wives within twenty-four hours after its receipt." Directly or indirectly through this division, 878 "reconciliations" were brought about. In the civil division, 4582 cases were "finally disposed of," the great majority within thirty days from the "date of issue joined between the parties." The juvenile division heard and disposed of 14,374 cases, all of them on the day when brought into court. All hearings in this division are private, and "no record of delinquency is permitted to pass out of the possession of the juvenile court." A highly commended requirement is that one judge shall preside in this division continuously for at least one year. The criminal division disposed of 2141 cases.

The report calls attention to the fact that out of a total of 3599 civil and criminal cases tried, only 38 appeals have been taken to the Superior Court. Detailed statistical tables, the act of 1913 creating the municipal court, and the rules of the court, form a part of this report.²

The eighth *Annual Report of the Civil Service Commission of Philadelphia* covers the year 1913. The percentage of persons passing examinations in the competitive class was 41.2 as compared with 63.3 in 1912, the decrease being due to a raising of standards. There were 283 "provisional appointments" as compared with 605 in 1912, a reduction of 53.2 per cent. which was accomplished by holding "sufficient examinations to provide adequate eligible lists." A separate bureau of labor, conducted by an examiner in charge of labor, was established through which "great developments have been made." Political favoritism in this branch of the service has been eliminated and competitive physical examinations for common laborers instituted. Several positions of "high administrative character," carrying salaries ranging from \$4300 to \$6000, were satisfactorily filled by the merit system. The most striking achievement of the commission was that of "manning the new department of city transit expeditiously" with 140 high class engineers, draftsmen, etc., in the brief period between June 12 and July 1. No appointments were made in the non-competitive class, and the 1706 exemptions were confined wholly to positions of low grade and uncertain tenure in hospitals and the department of wharves, docks and ferries. A new rule was adopted opening to public inspection the examination papers of all applicants, with the marks of the examiners thereon. The Philadelphia commission is "the only one which has taken this advanced step. The results in disarming the criticisms of disappointed applicants have been very gratifying."³

The committee on crime of the city council of Chicago, of which Alderman Charles E. Merriam is chairman, has published a valuable report of 196 pages. The committee was appointed in 1914 for the purpose of investigating the frequency of crimes in Chicago and the official disposition of the cases, and also the causes of the prevalence of such crimes and the best practical methods of preventing them. The summary of the findings of the committee is little short of alarming:

² Contributed by P. Orman Ray, Trinity College, Connecticut.

³ Contributed by P. Orman Ray, Trinity College, Connecticut.

the amount of crime in Chicago is shown to be rapidly increasing; the machinery of the law catches petty and occasional criminals, but fails signally to suppress the professional criminal; there are a large number of "hang-outs" which are the meeting places of professional criminals; the value of property stolen and disposed of through the burglars' trust reaches millions of dollars; and on the other hand the police organization and methods are wholly inadequate to cope with the situation. A summary of recommendations follows the summary of findings. The body of the report consists of statistics relating to crime in Chicago, by Edith Abbott of the Chicago School of Civics and Philanthropy; a study of the underlying causes and practical methods for preventing crime, by Robert H. Gault, professor of psychology at Northwestern University and editor of the *Journal of Criminal Law and Criminology*, in which the author shows the relation between the mental and physical condition of criminals and their crimes; finally the report closes with a description and analysis of criminal conditions prepared by Fletcher Dobyns, associate counsel to Morgan L. Davies, the attorney for the commission. Mr. Dobyns summarizes his investigation with the statement that "professional crime is better organized for defense against the law than society is for the apprehension and conviction of the professional criminal. The police department as a body is exonerated from any discredit which the statistics of crime might seem to reflect upon it, but the investigation found that certain members of the police force were "hand in glove with criminals." The report must prove of great service in the attempt to improve the criminal situation in Chicago, and the field of political science would be greatly enriched if similar reports could be compiled in all of our large cities.

Human Nature and Railroads, by Mr. Ivy Ledbetter Lee (Philadelphia, E. S. Nash and Company, 1915, pp. 129), is an attempt to bring the railroads and the general public into greater sympathy with each other. The author was formerly Executive Assistant of the Pennsylvania Railroad, and the chapters of the book consist of lectures delivered on various occasions. "The great problem," he says, "is to establish the point of contact, to make the railroad manager, the employe, and the public in their mutual relations understand one another's point of view." The book is a frank recognition of the necessity on the part of the railroads of meeting the hostile criticism which has been directed against them in recent years and of proving that such criticism and the hostile legislation accompanying it is hampering the efficiency of the

railroads and blocking their efforts to improve the transportation system of the country. While not denying that certain railroads have in the past been guilty of dishonest practices, the author contends that at the present day the railroad system in the United States is fundamentally honest and well conducted, and he pleads for a fairer attitude on the part of the public.

The Road Toward Peace, by Charles W. Eliot (Boston, Houghton Mifflin Company, 1915, pp. xv, 217), is offered as "a contribution to the study of the causes of the European war and of the means of preventing wars in the future." Within recent years Dr. Eliot had taken a prominent part in the work of organized pacifism in the United States, and the present volume is made up in part of addresses delivered in that connection supplemented by letters to the *New York Times* written since the beginning of the war, together with two further addresses and a chapter presenting the correspondence between the author and Mr. Jacob H. Schiff in the fall of 1914. In his early address the author ranged himself with the advanced pacifists holding that a reduction of armaments was impossible until an international court should be set up with a police force behind it. In his public utterances since the outbreak of the war the author has expressed himself as strongly against the bureaucratic government of Germany and the militaristic and aggressive spirit which dominates it. He is not, however, of the opinion that the causes of the war are to be found in the events immediately preceding its outbreak. Rather he finds those causes in the maintenance of monarchical governments supported by national religions, in the maintenance of conscript armies with the inevitable accompaniment of a military caste, in the bureaucratic control of foreign affairs and in the habitual use of force to acquire new territories. National militarism, he holds, should be controlled by an international force under the direction of a European league or council.

It is to be hoped that friendly comments on American life and institutions by foreigners of learning and culture will always be welcome among us. To help us see our national life in its true perspective is the benefit to be obtained from Frederick C. de Lumichrast's *Americans and the Britons* (New York, D. Appleton and Company, pp. xiv, 369; price \$1.75 net). The contrast in America between free institutions and the domination of political bosses, between freedom of speech and lack of frank speech, between the absence of formal class distinctions

and the actual aristocracy of wealth on the one hand and culture on the other, between the dreariness of the poorer sections of our large cities and the luxury displayed in our wealthy suburbs, all these contrasts must strike the foreign visitor as they cannot strike those who have grown up under their influence. Prof. de Lumichrast discusses in different chapters "Individualism," in which he makes some pointed remarks upon the tendency in democracies for the individual to stress his own importance and his rights without recognising his duties and responsibilities towards the State; "Democracy and Militarism," in which he comments on the anti-militaristic spirit of the American people not from "any lack of courage or capacity to fight hard and well, but simply because fighting for fighting's sake does not appeal to the sound sense of the nation;" "Government," in which we are told that "what is wanting in the United States is a more vigorous public spirit," that "it is precisely that eternal vigilance [which is the price of liberty] which is lacking in the Americans;" "Law," in which the author with great frankness tells us that "lawlessness, in the sense of violation, neglect, contempt or evasion of the law is universal in the country;" "Foreign Relations," in which he offers an explanation of the anti-British feeling which he finds still prevalent in the country. In other chapters the author discusses various phases of American social life, Patriotism, Marriage, Woman, Education, The Press, etc. If at times he seems to exaggerate evils, as, for instance, in the sweeping statements that "each man does as he pleases, being a law unto himself," "ordinances, regulations, . . . are not intended to be taken seriously," at the same time he recognizes that there is a "strong growth of sound public opinion" in favor of a vindication of the law, and that the education of the people, which is the hope of the country, is steadily progressing; and he gives credit to the constructive spirit which is manifest in the effort to purify national life and to train the multitudinous foreign components of the country in the ways of good government.

America and Her Problems by Paul H. B. d'Estournelles de Constant (New York, The Macmillan Company, 1915, pp. xxii, 545) is a volume of impressions of America by one who is best known among us for his work in the cause of international peace. It is a book which will make the average American impatient. The descriptions of the country are sketchy and are interspersed with comments of places and people which are often lacking in insight, and which impress the native as being snap

judgments and obvious criticism. But these faults, though serious to the casual reader, are largely compensated for by the spirit of idealism which pervades the book. The first edition appeared in French in 1913, and the present edition is a translation with amendments. It is, as the author says, "an act of faith in American and in human idealism," and its object is to make the United States "realize the incalculable service they could render to civilization, as well as to themselves, by remaining faithful to their peace policy." The author's solution for the Mexican situation is a collective intervention of the Powers—a step which he asserts would not be in contradiction to the Monroe doctrine, and which the Mexican people would not regard "as a danger or an offense, but as a mark of friendliness." His judgment upon the Japanese question, in the acute form it had reached in 1913, is that there is no rational possibility of the United States attacking Japan or of Japan attacking the United States, the latter impossibility being due to the fact that, even should the jingo spirit prevail in Japan, an attack upon the United States would threaten England in a way which would ipso facto break the Anglo-Japanese alliance and range the British Empire, as well as France, Russia, Holland, and Germany, against Japan. The author's view of militarism in the United States is that the danger for this country lies in trying to outstrip other countries in naval power, with the consequent danger of creating a spirit of aggression and a reliance upon might. On the whole, however, he is optimistic, and it may serve to stimulate our efforts for reform in government and for a high-minded foreign policy to know that other countries are looking to us to initiate a new era from which their inherited traditions of suspicion and jealousy and consequent militarism have debarred them.

The Progressive Movement, by Benjamin Parke DeWitt (New York, The Macmillan Company, pp. 376, price \$1.50), is the first of a new series of the *Citizens Library of Economics, Politics and Sociology*, edited by Richard T. Ely. It is offered as a "non-partisan, comprehensive discussion of current tendencies in American politics," and it is the purpose of the author to make clear the distinction between the Progressive party and the larger progressive movement for political reform pervading all parties. The progressive movement the author finds to be made up of three tendencies: first, the insistence by the best men in all parties that corrupt influence in government must be removed; second, the demand that the machinery of government be so changed as to make it easier for the people to control it; and third, the conviction that the

functions of government must be extended to relieve social and economic distress. The author then proceeds to show the meaning of the progressive movement by a sketch of the political history of the country, and next takes up the recent manifestations of that movement in the Democratic, Republican, Progressive, Socialist, and Prohibition parties. These chapters will be found very valuable as material for courses on the history of political parties since the Civil War. In subsequent chapters the author discusses the progressive movement in national, state, and municipal politics, and here will be found much helpful material for courses on present political problems. The author is frankly sympathetic in his treatment of the subject, and while some persons will be disposed to dispute with him whether all steps of the movement are truly progressive, i.e., advances in the desirable direction, and others will contest the expediency of this or that practical measure, e.g., certain applications of the initiative, referendum and recall, still no one will contest that the various phases of the movement have been clearly and impartially set forth and that the author has contributed in a material way towards the study, both scientific and popular, of so-called "reform legislation." The work will be read with all the greater interest as a companion volume to the recent contribution on *Progressive Democracy* by Herbert Croly. Mr. Croly expresses ideals; Mr. DeWitt deals with the practical steps towards the ideal.

Equitania; or, The Land of Equity, by W. O. Henry, a surgeon of Omaha, Nebraska (privately printed), is a discussion of problems of the day—social, moral, political, and religious. The author creates a fictitious land where distinct groups of persons, Buddhists, Christians, Mohammedans, and Jews, have arrived in search of a new country and there agree to work out their destinies together. With this Utopian setting the author draws up an ideal constitution for the realm, in which social and moral precepts figure side by side with legal provisions. The inconsistency of discussing the problems of a community of a hundred million and of suggesting how they might be remedied in a community of four thousand, is overlooked, although the problem of the unemployed could not possibly be the same in the two countries. Without specifically advocating Socialism the author calls upon the government of the State to provide for each individual the necessities of life by furnishing him with "suitable employment." The booklet, while containing many judicious comments on current questions, does not come within the class of contributions to political science.

The Diplomatic Protection of Citizens Abroad; or, the Law of International Claims, by Dr. Edwin M. Borchard, law librarian of Congress and lately assistant solicitor of the department of state, is announced by the Banks Law Publishing Company. It is a volume of 950 pages, large octavo, and is priced at \$8. This is a work dealing with a subject that lies partly in the field of international private law, in so far as it involves claims brought by individual citizens, and partly in the field of international public law. The work is divided into four parts: Part I which deals with the rights of citizens and of aliens and with the international responsibility of the state; Part II which deals with the exercise of diplomatic protection; Part III which treats of the object of protection—the person and property of citizens; and Part IV which defines the limitations on diplomatic protection. Apart from the timeliness of the publication of this work students of international law will welcome a new volume from the pen of one whose contributions are always marked by scholarship of the first order.

In *The Orthocratic State*, which has for a sub-title, "The Unchanging Principles of Civics and Government," by John Sherwin Crosby (New York, Sturgis and Walton Company, 1915, pp. 166), we have a contribution to the theory of political science in which the author seeks to determine, in answer to the Anarchists, by what right, if any, the compulsory state is maintained, "by what right any majority can compel an unwilling and otherwise unoffending minority to unite with them in organizing and maintaining the State." After disposing of the several classical theories of the State the author proceeds to draw a distinction between society and the State, the former being "that natural, uncontrived association into which mankind are unconsciously brought and in which they are ever held by immutable conditions of a common existence upon the earth," and the latter, the State, being "an artificial, organized association formed by the power and according to the will of man." Citizenship of the State does not release men from the obligations of society, that "preëxistent, indissoluble association of mankind." The "natural rights of man" are, in consequence, not "mere metaphysical conceptions" but "actual, necessary physical conditions of normal human existence." What is this but an echo of Aristotle and the schoolmen whom the author summarily dismissed in his first pages. Subsequently, however, in explaining "a natural right" the author asks us to conceive of "a man alone upon the earth" and the coming of other

men, and here we have echoes of Hobbes and Rousseau, also previously condemned.

The basis of the State is collective self-defense on the part of the individuals composing the State. Upon this basis the author establishes the four functions of government—the Peace-preserving function, the Right-preserving function, the Public-serving function, and the Self-preserving function which has for its object the maintenance of the authority of the State. The difficulty of supporting all of these functions, especially the Public-serving function, upon the primary right of self-defense, the practical thesis that there are no “quasi-public functions” which may be farmed out to private persons or companies, the theory that “land values are social” and belong to the people collectively, the denial to the State of a right to create corporations “for any purpose whatever,” the condemnation of tariff and excise taxes in principle—are all weaknesses in the superstructure of a State whose foundation stones are illogically fitted together. But if the author’s point of approach is not scientific and if his deductions are not always justifiable, if, it is suspected, he has a theory of land taxation to advocate, his volume is nevertheless original and stimulating and will be read with interest by the student even though he may not agree with its conclusions.

Professor Münsterberg has written another work on the war—*The Peace and America* (New York: Appleton, 1915, pp. 276). The argument is obviously directed to Americans of pro-Ally sympathies, but it is a striking fact that a volume prepared by a psychologist should, like his volume entitled *The War and America*, be of a character almost sure to have an effect opposite to that which is intended and desired. The work abounds with unsupported assertions which therefore insult the intelligence of the reader. Professor Münsterberg is still unable to see that Americans do not care for his opinion as to the personal qualities of the Kaiser, nor are they impressed by the fact, which is stated with care, that the author enjoys his personal acquaintance. No reference is made to the statement that has been made that for years the author has been a salaried agent in America of the German government. The author states his belief that in 1914 no “really binding” treaty between Germany and Belgium existed—but aside from this the validity of the argument from necessity as justifying the invasion of that hapless country is frankly asserted. In closing Professor Münsterberg asserts that

because of America's attitude and actions in the war, the country has become foreign land to German-Americans. These five million voters have been thus far powerless "because their political energies have never been concentrated in common action." And he adds: "If the German element, backed by a united organization, should become a serious factor in the practical political life of the nation, if those who preach hatred against Germany were defeated in elections whenever possible, if a hundred or more Democrats and Republicans of German descent were carried into the House, a repetition of that unspeakable moral misery of the twenty million German-Americans would become impossible." What can one say of a suggestion such as this?

America to Japan, edited by Lindsay Russell (New York, G. P. Putnam's Sons, pp. 318, price \$1.25), is "a symposium of papers by representative citizens of the United States on the relations between Japan and America and on the common interests of the two countries." It is a companion volume to *Japan to America* edited by Naoichi Ma-saoka and published in March, 1914. The list of papers is a long one and includes the names of a score or more of men who have filled high places in American public life. The purpose of the volume must explain the brief and unscientific character of the articles it contains. Many of them are no more than expressions of good will towards Japan, others stress this or that element in the relations of the two countries, chiefly the question of Japanese immigration and the rights of the Japanese aliens in the Pacific States, while but few have any intrinsic value. "The Pacific Coast Peril," by Francis B. Loomis, former assistant secretary of state, contains many shrewd remarks and sets a standard which, if attained in other papers, would have made the volume one of permanent value. Mr. Loomis claims that under the present "gentlemen's agreement" with Japan the number of Japanese in California remains practically stationary, and that if it were not for the propaganda of hate carried on by interested parties, the whole question would disappear. To this end he advocates giving the Japanese now in America the ballot and citizenship, in order to make the politicians curry favor with them instead of harring them. Apart, however, from the merit of the individual papers, it can hardly be doubted that the volume, if translated into Japanese, would help greatly to remove misunderstanding in that country of the policy of the United States towards it, and would enable its people to distinguish between the shal-

low comments of jingo newspapers and the mature judgment of representative Americans.

Germany Since 1740, by George Madison Priest, professor of Germanic languages and literature in Princeton University (Boston, Ginn and Company, pp. 199, price \$1.25), is a convenient summary of the principal facts in modern German history "intended primarily to offer a background of German history to students of modern German literature," but also of considerable value to the general public as presenting the historical basis for a better understanding of German foreign policy of recent years. Successive chapters deal with political and social conditions in Germany in the early decades of the eighteenth century, with the reign of Frederick the Great, with the decline and degradation of Germany during the years from 1786-1808, and with the regeneration of Germany and the progressive steps in the development of constitutional liberty and national unity. The text is accompanied by maps, together with a chronological table of important events and a selected bibliography. While not a contribution to historical literature the volume will serve as an introduction to modern German history and will help to disentangle for the lay reader the complexities of German state and national life.

Few persons are as competent as Dr. E. D. Durand to give an intelligent opinion upon the policy of the law in regard to trusts, and his recent volume *The Trust Problem* (Cambridge, Harvard University Press, 1915, pp. 144), is therefore most welcome. The policy of laissez faire he considers suicidal. The problem, then, becomes one of regulation or prohibition. The difficulties of a policy which permits the free formation of trusts, but seeks to regulate them, are shown to be exceedingly great. "The policy of permitting trusts to exist might result in the extension of trusts over almost the entire field of industry. It might also result in practically complete monopolization by each trust of its particular field. The determination of costs and profits over the multifarious field of industry would require immensely elaborate investigations and would involve extraordinarily difficult questions of judgment. Proper adjustment to the ever varying conditions of demand would be almost impossible. A vast governmental machinery for fixing prices and profits would have to be superimposed upon the machinery of private business. Governmental ownership on a vast scale or even

complete socialism might readily be the outcome of this policy." On the other hand, Dr. Durand considers it feasible to prevent by law the more formal types of combinations and of contracts in restraint of trade. It will be difficult to prevent the less formal understandings which restrict competition, but these are not generally very effective in maintaining monopoly. Whatever the policy adopted, Dr. Durand sees in the taxing power a further source of effective control.

Population: A Study in Malthusianism, by Warren S. Thompson, instructor in sociology in the University of Michigan, appears as No. 3 of volume 63 of the Columbia University *Studies in History, Economics and Public Law*. The author first explains the meaning of Malthusianism as expressed in the sixth edition of the *Essay on the Principle of Population* rather than in the pessimistic form of the first edition. This is followed by a statement of the views on population held by some of the recent writers on Economics. Subsequent chapters deal with wages and prices, in which the author attempts to show the relations of wages and prices within the last two decades, crops and other food supplies, the movement of population from 1860-1910 and its growth in relation to food supply, and finally the outlook in the light of the law of diminishing returns. The essay is of especial interest in view of the conclusions which the author reaches, namely, that Malthus was essentially correct in his statement of the law of population and that even in the United States the population cannot continue to increase at its present rate without being more and more subjected to the actual want of food, unless an increasing, instead of a decreasing, proportion of the population becomes rural, in which case our present standard of living must be simplified.

Nationalization of Railways in Japan, by Toshiharu Watarai, formerly assistant councillor in the imperial board of railways of Japan, appears as number 2 of volume 63 of the Columbia University *Studies in History, Economics and Public Law*. After a preliminary survey of the development of the economic life of modern Japan the author presents a valuable sketch of the historical development of the railroads of Japan down to their nationalization in 1906. This is followed by an explanation of the reasons for nationalization and the basis on which it was carried out. Subsequent chapters deal with state finances and the nationalization of railroads and with the policy of Japan in regard to freight and passenger rates. While the peculiar economic and social

conditions of Japan make it impossible to draw any positive inferences with respect to the advantages of the nationalization of railways in the United States, the book cannot but throw light on the discussion of that question. The author's conclusion is that "the nationalization of the Japanese railroads has not had the favorable effect generally expected, either upon the national finances or upon the industrial development of the country," and he offers proposals for reform in the granting of charters to private railroads side by side with state railroads, and in the acceptance of provincial loans for the building and betterment of the state railways.

Growth of American State Constitutions from 1776 to the end of the Year 1914, by J. Q. Dealey (Boston, Ginn and Company, 1915, pp. 308), is a valuable addition to our means of studying the comparatively neglected organic laws of the various States. The present work is not merely a new edition of the monograph by the author which was published as a supplement to the *Annals of the American Academy of Political and Social Science* for March, 1907, but is considerably amplified and largely rewritten. Part I is devoted to the "History of State Constitutions;" Part II describes the "Provisions of Existing State Constitutions," while Part III outlines the "Trend in State Constitutions." The appearance of the work at the present time is especially welcome in view of the rather widespread movement towards the revision of state constitutions.

Government for the People, by T. H. Reed (New York, B. W. Huebsch 1915, pp. 265), is a comprehensive treatment of certain problems of American government, national, state, and local. The book was originally proposed as a series of extension lectures on contemporary political problems. The different chapters, therefore, have a somewhat disconnected and slightly miscellaneous character. They contain little that is new, but are written in a popular, fluent style which should appeal to the general reader and give him a clear view of our government from many angles. Among the most interesting chapters are those on "The Long Ballot as a Cause of Corruption" and "The Disorganization of State Administration."

The American Bar Association has begun the issue of a quarterly entitled *The American Bar Association Journal*, the first number being dated January, 1915. The pages of the *Journal* will be devoted to announcements and transactions of the association, including those of

affiliated bodies which have been organized under its auspices, such as the Association of American Law Schools, the American Institute of Criminal Law and Criminology, and the Conference of Commissioners on Uniform State Laws. The *Journal* is to be sent without charge to all members of the association. To others the annual subscription is three dollars. The place of publication is the Munsey Building, Baltimore, Md.

A second edition of Beale and Wyman's *Railroad Rate Regulation* has appeared from the press of Baker, Voorhis and Company.

In view of the relations between the United States and Mexico, a timely monograph is that issued under the title *The Doctrine of Intervention*, by H. G. Hodges (Princeton, N. J., The Banner Press, 1915, pp. 288). The author defines intervention as "an interference by a State or States in the external affairs of another State without its consent, or in its internal affairs with or without its consent." He goes into some detail in describing conditions which preceded various historical interventions or proposed interventions. The narrative is brought down to the present situation between the United States and Mexico and some account is also given of the various interventions in the present European war. The author is strongly of the opinion that "interventions, otherwise justifiable, should be undertaken by several States acting in concert." In the appendix are printed the neutrality proclamation of President Wilson in the European war, the correspondence between Secretary Bryan and Chairman Stone of the Senate Committee on foreign relations on the neutrality of the United States, and a select bibliography of the subject.

State Documents for Libraries, by E. J. Reece (University of Illinois Bulletin, Vol. XII, No. 36, 1915, pp. 163), is a convenient and useful handbook not only for libraries but also for anyone who has occasion to make use of the material to be found scattered through the official publications, reports and documents of the various state officers, bureaus, boards, and commissions. It contains, for example, a list of compilations of state statutes and a list of state blue books. One chapter is devoted to an explanation of the methods of distribution of state documents found in various States. It shows graphically the loose and ill-organized methods in vogue and the need for centralized distribution.

War Obviated by an International Police (The Hague, Martinus Nijhoff, 1915, pp. 223) is a series of essays written in various countries dealing with this proposition of the pacifists to prevent war. It might be argued that this method would mean the undertaking of war to prevent war, but this would probably be a superficial criticism. The proposition deserves more careful consideration, in which the publication of this volume will assist. Among those whose contributions to the consideration of this question are included in the book are C. van Vollenhoven, S. von Houten, Theodore Roosevelt, Nicholas Murray Butler, A. H. Fried, Leon Bourgeois, Walther Schücking, T. J. Lawrence, Norman Angell, and Sir Edward Grey.

Political scientists as well as historians will welcome the new *Riverside History of the United States*, published by Houghton, Mifflin and Company in four volumes. Volume I, by Prof. Carl L. Becker, is entitled "Beginnings of the American People;" volume II, by Prof. Allen Johnson, is entitled "Union and Democracy;" volume III, by Prof. William E. Dodd, is entitled "Expansion and Conflict;" and volume IV, by Prof. Frederic L. Paxson, is entitled the "New Nation." The editor of the series is Professor Dodd.

The British North American League is the title of a brief monograph by Prof. Cephas D. Allin of the University of Minnesota. It is published by the Ontario Historical Association and is an introductory study of one phase of the history of the Conservative party in Canada. Among the research publications of the University of Minnesota now in press is a monograph by Dr. M. N. Orfield on *Federal Land Grants to the States, with special reference to Minnesota*.

Operation of the Initiative, Referendum, and Recall in Oregon is the title of a volume by James D. Barnett, professor of political science at the University of Oregon. It will be published by The Macmillan Company during the course of the summer.

A feature of the literary history of the European war has been the semi-official reports from time to time made by an "Eye-Witness," present with the British general headquarters, of the movements and operations of the British army and of the French armies in immediate touch with it. These vivid narratives, as made public by the English press bureau, and covering the period from September, 1914 to the

end of March, 1915, are now published in a single volume by Longmans, Green and Company. (New York, 1915, pp. 303). This volume will undoubtedly be one of permanent value.

The ninth volume of the publications of the American Sociological Society (University of Chicago Press, 1915, pp. 202) is of especial interest to the political scientist. The papers and discussions which it contains are devoted to the general subject of "Freedom of Communication," the sub-titles being "Reasonable Restrictions upon Freedom of Assembly," the principal paper being presented by Hon. Arthur Woods, police commissioner of New York City; "Reasonable Restrictions upon Freedom of Speech," the principal paper being by Mr. James Bronson Reynolds, counsel for the American Social Hygiene Association; "Freedom of the Press in the United States," discussed in a most able paper by Prof. Henry Schofield of the Northwestern University; and "Freedom of Teaching in the United States," the principal papers being by Prof. U. G. Weatherly of Indiana University, and President Henry Pritchett of the Carnegie Foundation for the Advancement of Teaching.

A rather remarkable title page is that of Mr. John Edward Oster, "*The Political and Economic Doctrines of John Marshall*, who for thirty-four years was chief justice of the United States. And also [*sic*] his letters, speeches, and hitherto unpublished and uncollected writings." (New York, Neale Publishing Company, 1914). In point of fact, very few pages of the volume are from Mr. Oster's own pen. The vast bulk of it consists of speeches and letters of Marshall, which are furnished without comment, save as to the source from which they were drawn by the editor. Though the majority, about one hundred and fifty in number, of the letters have been previously published and none of them is particularly illuminative of the great chief justice's mental processes, yet it will be serviceable to have them together between two covers. Unfortunately they are arranged in a very haphazard fashion. The index, on the other hand, is fairly good.

The Johns Hopkins press has issued under the title of *The Diplomacy of the War of 1812* a volume of lectures given in 1914 at the Johns Hopkins University by Frank A. Updyke, professor of political science at Dartmouth College.

Some Observations on the Economic Interpretation of Early Roman History, by C. W. Macfarlane, has just appeared from the press of the J. B. Lippincott Company, of Philadelphia. It is a paper-bound book of sixty-two pages, which purports to show the importance of adequate training in philosophy and economics to every student of the larger historical problems. In reality it is an attack upon Prof. Tenney Frank's late volume on *Roman Imperialism*. It would seem that many of the criticisms of Professor Frank's book are scarcely justified.

The Newberry Library, Chicago, has issued as Bulletin No. 4, a "List of Documentary Material Relating to State Constitutional Conventions, 1776-1912," compiled by Augustus H. Shearer, Ph.D., of the library staff. The items number altogether 615. A limited number of copies for the use of scholars interested is available upon request.

The Collectivist State in the Making, by Emil Davies (London, G. Bell and Sons, 1914, pp. 267), is a handbook describing the activities of the modern city and State in social reform by an ardent advocate of state socialism. Although Mr. Davies has collected in convenient form a number of interesting facts concerning social and industrial legislation, his treatment is somewhat scrappy considering the importance of the subject.

The Diplomacy of the War of 1914, The Beginnings of the War, by Ellery C. Stowell, assistant professor of international law at Columbia University, is announced as forthcoming. The subject is introduced by a narrative of recent European history and this is followed by ten chapters which analyze and rearrange the official papers and present them as an original chronological narrative. A series of questions and answers is designed to present the material in a form for ready reference, while the volume concludes with a carefully selected list of original documents. The work is to be followed by two other volumes, one on the diplomacy during the war and one on the negotiations attending the close of the war.

An official *Cumulative Index to State Legislation*, containing a complete record and a numerical and subject index of all bills introduced in all state legislatures, is being published by the Law Reporting Company, New York. It is compiled and published for the coöperating libraries and legislative reference departments, under the direction of the joint

committee on national information service of the National Association of State Libraries, American Association of Law Libraries, and Special Library Associations.

The Revue Internationale de Sociologie for May, 1915, contains a translation of the article by Prof. J. Salwyn Schapiro, entitled "The War of the European Cultures," which appeared in the April *Forum*.

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Constitutions—Amendment. State vs. Marcus. (Wisconsin, April 15, 1915. 152 N.W. 419.) Where an existing constitution prescribes a method for its own amendment, an amendment thereto to be valid, must be adopted with strict conformity to that method. Where the entries in the journals of the houses of the legislature are defective in such a manner as not to show the exact proposition that was submitted to and passed by the legislature, there is a fatal omission to comply with the constitutional requirements, and it is of no avail that the people by their votes subsequently approve the proposed change. Where no other method is provided for by the constitution a determination of whether an amendment to the constitution has been validly proposed is within the powers of the courts.

Delegation of Legislative Power. People vs. C. Klinck Packing Co. (New York, February 5, 1915. 108 N.E. 278.) An amendment to the one day's rest in seven law which exempted from the operation of the law employees in certain occupations "if the commissioner of labor in his discretion approves" was held to be an unconstitutional general delegation of legislative power. "The legislature cannot secure relief from its duties and responsibilities by a general delegation of legislative power to someone else." Under its terms the commissioner of labor has the power without check or guidance to veto the entire provision or to say whether it shall take effect in any, all or no cases. It was held, however, that this particular provision was not so intimately connected with remainder of the law as to render the entire law unconstitutional.

Delegation of Legislative Power. State vs. Briggs. (Utah, March 19, 1915. 146 P. 261.) The local option statute does not delegate legislative powers to municipalities. The voters are merely given the option of choosing sale or no sale, and when either is chosen the law determines the method of control.

Due Process of Law. Thrift vs. Laird. (Maryland, January 14, 1915. 93 A. 449.) An act establishing a Public Service Commission, which provides that the salaries of its members and its general counsel shall be paid in part by the State and in part by the city of Baltimore, does not as far as it provides for payment of salaries by the city, deprive the city of its property without due process of law.

Elections—Preferential Voting. Orpen vs. Watson. (New Jersey, April 21, 1915. 93 A. 853.) A statute requiring a person voting for commissioners of a municipality to express a first choice for each office to be filled, under penalty of having his ballot declared void, does not contravene the constitutional provision that every citizen is entitled to vote for all officers elective by the people. A provision of the same statute allowing each voter to express second, third and fourth choices which are to be added in their order to the first and other choices to the extent necessary to ascertain which candidate has a majority of all votes cast, does not allow of voting for the same candidate for the same office more than once, for no voter can cast more than one effective vote for the same person for the same office.

Equal Protection of Laws—Discrimination against Aliens. People vs. Crane. (New York, February 25, 1915. 108 N.E. 427.) A statute prohibiting the employment of aliens on public work by a State or municipality or a contractor thereof does not unconstitutionally discriminate against aliens. The moneys of the State belong to the people thereof who are citizens, and aliens are not members of the State as a body corporate. The State may discriminate between citizens and aliens in the distribution of its own resources; for the common property of the State belongs to the people thereof, and in any distribution of that property the citizens may be preferred. The equal protection of the laws is due to aliens as well as to citizens, but "equal protection" does not mean that aliens must share in the common property of the State on the same terms with citizens, and in determining what use shall be made of its own moneys, the State may consult the welfare of its own citizens, and what is a privilege, rather than a right, may be made dependent on citizenship.

Juvenile Delinquent Act—Nature of Restraint. Weber vs. Doust. (Washington, March 9, 1915. 146 P. 623.) The State has the right to the custody of children and detention under a juvenile delinquent act

without a warrant is not a deprivation of liberty without due process of law. Such an act is not punitive in its nature or purpose.

Municipal Corporations—Power to Enact Ordinances Regulating Billboards. Thomas Cusack Co. vs. City of Chicago. (Illinois, April 9, 1915. 108 N.E. 340.) A city has power to enact an ordinance requiring the consent of a majority of the residence owners to the erection of a billboard in a residence block under the statute giving cities the power to regulate the erection of billboards, etc., upon vacant property and buildings. On the question of the reasonableness of such an ordinance it is competent to show that the erection of billboards is productive of fire and that residence districts are not so well protected as business districts; and that billboards offer a protection to disorderly and law-breaking persons.

Obligation of Contracts. Baltimore & Ohio R. Co. vs. Miller. (Indiana, January 29, 1915. 107 N.E. 545.) A valid contract, if indivisible, may be rendered wholly void by federal legislation subsequently passed. Consequently a provision of a contract between a railroad relief association and an employee which deprives such employee of any benefits in case he attempts to recover for the injuries by suit, being forbidden by the federal employers' liability act, invalidates the entire contract. The court further points out that the contract could not be invalidated by subsequent state legislation as such legislation would be violative of the provision of the federal constitution prohibiting a State from passing any law impairing the obligation of contracts.

Officers—Constitutional Office. Magee vs. Brister. (Mississippi, April 12, 1915. 68 S. 77.) While the legislature may within certain limits prescribe the duties pertaining to an office created by the constitution, it cannot practically abolish the office by preventing its incumbent from discharging those duties which necessarily pertain to it.

Officers—Governmental Functions. Apfelbacher vs. State. (Wisconsin, April 16, 1915. 152 N.W. 144.) A State is not liable for the tortious acts of its officers who are exercising a governmental function. The propagation of fish by the State for the stocking of public streams is a governmental, not a proprietary, function.

Officers—Term of Office. O'Laughlin vs. Carlson. (North Dakota, April 16, 1915. 152 N.W. 675.) In the absence of constitutional

prohibition the legislature may change the term of office even after the election or appointment of the incumbent.

Officers—Manner of Appointment. Ingard vs. Barker. (Idaho, March, 1915. 147 P. 293.) The legislature upon the creation of an office may decree that the appointment of officers to fill such office may be made by the chief executive or by any person, board, corporation or association of individuals and such appointment would not be an improper exercise of power belonging to the executive. In the absence of a constitutional provision to the contrary, any one of the three departments of government may, under the authority of a statutory provision, appoint for any class of office in its department.

Personal Rights—Liberty. Weber vs. Doust. (Washington, March 9, 1915. 146 P. 623.) "Liberty," in so far as it is noticed by the government, is restraint, rather than license. It is a yielding of the individual will to that of the many, subject to such constitutional guarantees or limitations as will preserve those rights and privileges which are admitted of all men to be fundamental. "Liberty" in the civil state is a giving up of natural right in consideration of equal protection and opportunity.

Police Power—One Day's Rest in Seven Law. People vs. Klinck Packing Co. (New York, February 5, 1915. 108 N.E. 278.) A statute providing for one day of rest in seven for all laborers in factories and mercantile establishments is within the police power of the State as being an enactment which really tends to promote and protect the public health without conflicting with individual rights of property and contract. The question of the measure of leisure to be given to such laborers is one for the legislature and is not subject to judicial review when not palpably unreasonable.

Race Discrimination. Queensborough Land Co. vs. Cazeaux. (Louisiana, January 25, 1915. 67 S. 641.) A condition in a deed, for the benefit of the grantor and its other grantees, that the grantee shall not sell to a negro, does not violate the fourteenth amendment to the United States Constitution; since, so far as prohibiting discrimination against the negro race, it applies only to state legislation, and not to contracts of individuals.

Religious Liberty—Bible in Public Schools. Herold vs. Parish Board of School Directors. (Louisiana, March 22, 1915. 68 S. 116.) The reading of the Bible, including both the Old and New Testaments, and the offering of the Lord's Prayer in the public schools, are discriminations in favor of Christians and against Jews and violate the provision of the constitution guaranteeing religious liberty.

Statutes—Sufficiency of Title. Thrift vs. Laird. (Maryland, January 14, 1915. 93 A. 449.) The purpose of a constitutional provision providing that every law shall embrace but one subject, which shall be described in its title, is to prevent the enactment of laws surreptitiously, and to give all interested an opportunity to be heard on the advisability of the proposed legislation, and to advise members of the legislature of the character thereof. While such a provision requires that the title indicate the subject, the title need not give an abstract, nor need it mention the means and methods by which the general purpose is to be accomplished.

Statutes. Sufficiency of Title. Locke vs. Ionia Circuit Judge. (Michigan, March 17, 1915. 151 N.W. 623.) The title of the act of 1899 which read "An act to provide for the examination, regulation and licensing of physicians and surgeons," while sufficiently broad to include the practice of medicine, is not broad enough to cover an amendment passed in 1913 which provides for licensing persons desiring to practice a system of treatment of human ailments without resort to drugs, medicine or surgery.

Workmen's Compensation Acts. Smith vs. Industrial Accident Commission. (California, February 16, 1915. 147 P. 600.) The federal employers' liability act is exclusive of state legislation, and an employee engaged in interstate commerce cannot recover for an injury received in his employment under a state workmen's compensation act.

JOHN T. FITZPATRICK.

Law Librarian,
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BOOK REVIEWS

Limitations on the Treaty-Making Power Under the Constitution of the United States. By HENRY ST. GEORGE TUCKER. (Boston: Little, Brown and Company. 1915. Pp. xxi, 444.)

Recent conflicts, either actual or possible, between the treaty-making power of the United States and the reserved rights of the States, have given rise to a considerable body of literature. Most of this has been concerned with the nature and extent of the treaty-power and has assigned to it a very broad scope; the opinion accepted by the authority as well as by the majority of the writers is that the reserved powers of the States do not operate as a curtailment. With a method and result contrary to these authors, Mr. Tucker has written an able, and since that of Butler the most elaborate work on the treaty-making power. He is concerned, however, not with ascertaining its nature and extent, but with setting limits to its exercise. A treaty, he concludes, may not abridge any individual rights guaranteed by the Constitution; it may not bind the United States to do what is forbidden by the Constitution; it may not "oust Congress of its exclusive constitutional grant of the power to legislate" on the enumerated subjects; it may not change the form of government of the United States; it may not confer greater rights on foreigners than are accorded citizens under the Constitution, and, finally, when the "control or protection of [personal and property] rights is, under the Constitution, confided to any department of the government or to a State, such department or State, as the constitutional repository of such rights cannot be ousted of their (*sic*) jurisdiction by having the same transferred to the treaty-making power."

In asserting several of these limitations Mr. Tucker merely follows the accepted opinion. His statement as to the power of the House of Representatives is probably too broad, but the chapter in which he discusses the subject is excellent, and as an addendum he prints the well known report on the Hawaiian Treaty made to the House of Representatives by his distinguished father (J. Randolph Tucker) in 1887. There is also a valuable analysis of the diplomatic correspondence relating to treaty obligations to foreigners. "It would seem," Mr.

Tucker says, "that there could be no doubt of the power of Congress to enforce by appropriate legislation the constitutional treaties entered into by the United States with foreign countries," e.g., by making offences against treaty rights cognizable in the federal courts. To the reviewer, however, the constitutional question does not admit of such a categorical answer; at least some mention should have been made of authority to the contrary, such as the valuable report to the American Bar Association in 1892 which is severely criticized by Professor Taft in his recent volume, *The United States and Peace*. But in any event, Mr. Tucker's opinion on this point seems inconsistent with his belief "that no essential power of a State, whether a reserved power or a police power, can by reasonable construction be constitutionally taken from it, in furtherance of the treaty-making power." This is the most important as well as the most questionable conclusion of the book; it is opposed by all recent writers, such as Willoughby, Corwin, Butler, Burr and Delvin.

To maintain his view Mr. Tucker first marshals the opinions of many authors and statesmen, who are considered to furnish supporting authority. But, read without a desire to twist the meaning, these excerpts are of slight importance. Story's opinion, for example, was that "the peace of the nation, and its good faith, and moral dignity, indispensably require that all State laws should be subjected to their [treaties'] supremacy." This passage (*Commentaries*, Sec. 1838) is not quoted by Mr. Tucker, but a more equivocal one is. Even this, if read fairly furnishes no support for his position. Story was followed by Cooley, who in turn is cited by J. Randolph Tucker in his work on the Constitution, and so none of these three can be said to maintain the supremacy of a State law. Similarly, nearly all of the writers quoted by the author of the volume under review can be shown either to be silent on this particular question, or to anticipate the prevailing view as to the extent of the treaty-making power. Such an interpretation has been convincingly made by Professor Corwin in his *National Supremacy*. After quoting "authors and statesmen" Mr. Tucker proceeds with an examination of the opinions of judges which calls for the same criticism. Here are set out the *dicta* which Willoughby thinks "will sooner or later be frankly repudiated by the Supreme Court."

Mr. Tucker then considers the treaty-making power under the articles of confederation and the grant in the Constitution. He devotes some space to an analysis, and a partially effective refutation, of the broad claims made by Butler on the ground that the treaty-making

power is inherent in sovereignty—a view not held by Corwin, Willoughby, and others. Then Mr. Tucker summarily disposes of the line of early cases decided by the Supreme Court (such as *Chirac v. Chirac*, *Hauenstein v. Lynham*, *Geofroy v. Riggs*, etc.) and which are counter to the view he is maintaining. These cases, according to the author, simply held that the treaty-making power may remove the badge of alienage from foreigners, and thus take them out from the operation of State discriminatory laws regarding descent and inheritance. In these cases, Mr. Tucker concludes, there was no annulment of local regulations. All the opinions in *Ware v. Hylton* are given an exhaustive analysis, and the unusual view advanced that the case did not declare the Virginia law to be invalidated by the Treaty of Peace of 1783. The argument is too complex to be summarized here; suffice it to say that Mr. Tucker's interpretation of these cases is altogether novel. Commentators and courts have, almost without exception, considered the cases as authority that the treaty-making power may infringe the rights of a State. (An excellent, although not so exhaustive, analysis of *Ware v. Hylton*, stating the common deduction from the case, is given by Burr, *The Treaty-Making Power*, pp. 339-345.)

With this disposition of precedent contrary to his thesis, Mr. Tucker is ready to consider the nature of the police power and its relation to the treaty-making authority. He recognizes that there is a line of cases, beginning with *Gibbons v. Ogden* and now constantly added to, making the police power subject to Congressional regulations under the commerce clause. This, however, furnishes no ground for a similar view with regard to the treaty-making authority. The grant of the power to conclude treaties is *general*; the powers reserved to the States are *specific*. In the construction of deeds and wills, a *general* grant is limited by a *specific* grant; the same is true in the American constitutional system. It hardly needs to be said that such reasoning is not conclusive.

In a book such as this, which makes novel deductions from familiar precedents, it is not unreasonable to expect at least a mention of the more important opposing authorities. But there is no reference to Corwin's *National Supremacy* or to Burr's *The Treaty-Making Power*. Butler's opinions are adequately treated, probably because they are extreme and in some respects more easily controverted. Willoughby is criticized because he attaches no importance to *Compagnie Française v. Board of Health*, in which the court held valid a State quarantine law, on the ground that there was no conflict between it and the treaty in question.

The opinion does not contain the slightest implication that if there had been a conflict, the State law would have prevailed. One can with difficulty resist the conclusion that Mr. Tucker's reasoning from this and the earlier cases is as follows: when the treaty is enforced, the State law is not struck down; when, however, the State law is enforced (although there is no question as to supremacy), the court would, if necessary, have struck down the treaty. The most conspicuous illustration of this tendency to twist authority is in the chapter on the Japanese-California Controversies. Mr. Tucker coolly cites President Wilson and Secretary Bryan in support of his view that the California land tenure law was supreme as against the treaty, when, from the diplomatic correspondence quoted, such a conclusion does not appear remotely valid.

This necessarily brief summary will serve to show the general character of Mr. Tucker's arguments. His work is painstaking, scholarly, and clearly and simply written. The conclusion is inevitable, however, that the book is a piece of special pleading rather than a scientific treatise.

LINDSAY ROGERS.

Austria-Hungary and the War. By ERNEST LUDWIG, with an introduction by Dr. Constantin Theodor Dumba. (New York: J. S. Ogilvie. 1915. Pp. 217, with two appendices.)

A voluminous literature has arisen already concerning the present European war and its causes. Unfortunately much of it has been done too hastily, with little regard for the historical, political and economic background and without a serious attempt at genuine historical research among official or authentic sources. And far too large a proportion of it has been penned to defend the position or action of this or that belligerent. It takes a skillful reader these days to pick out what is really "worth while," for the number of books and articles now being written on this war, which will survive the test of time and investigation, is not likely to be large.

In writing *Austria-Hungary and the War*, Herr Ludwig was fulfilling a patriotic duty. He is the imperial and royal consul of Austria-Hungary in Cleveland, Ohio; and, his magazine articles on this subject being returned unused by American editors, he prepared this work because "we would like to convince the American public that this war is not of our making." The publishers announce that the "book contains a comprehensive presentation of the political forces and his-

torical developments which led to the initial clash of arms," and the title hints at something of the same character. But both statements are misleading. The author writes: "I have no intention to argue here on the question who started this war. Developments in this war-drama have not yet reached the stage where anybody could have in an unbiased way collected all evidence referring to this point." And he says nothing on the vital question of the relation of the Servian conflict at the outbreak of the European war. His evident intention is to utilize the information at his disposal in proving two things: that the note to Serbia was not brutal and that Serbia was responsible for the Sarajevo murders and the Austro-Servian war. He has given us an interesting and well-written account of the Austrian case against Serbia; but his methods are curious.

He discusses the Servian note controversy before taking up the Sarajevo trial, and the historical claims of Serbia to Bosnia after finishing the chapter on the trial. His opening chapter is mainly composed of interesting impressions gathered during his homeward journey through Germany and Austria at the opening of the war; while the final chapter on "Economic war conditions in Austria-Hungary" has little to do with the real purpose of his work. And, out of the 198 pages of the text, only 85 are devoted to the Austro-Servian crisis: the theme which justifies the volume. With the exception of the German *White Book* and the records of the Sarajevo trial, from which last, however, he makes no direct quotations, Herr Ludwig bases his study entirely on secondary sources, newspapers and information received from influential friends. Unfortunately he seems not to have had access either to the Austrian or Servian official documents and correspondence.

The author evidently tries to be fair and tells a straight-forward story; but he errs in believing that the world will free Austria from all blame in the matter on his simple demonstration, based on somewhat doubtful and altogether untested evidence, that Serbia was planning deliberately to disrupt the Austro-Hungarian monarchy. No discussion of this question can be convincing that ignores the three fundamental factors on which any intelligent study of this controversy must rest: the southern Slav problem, the economic competition in the Balkans and the Austro-Russian competition in southeastern Europe. Herr Ludwig says something about Ruthenians and Poles, but nowhere do we find a discussion of the Croat-Serbs, their struggles for local autonomy and their relations to the other Serb peoples of the Balkans. Neither is there an account of the long economic conflict

between Austria and Servia, which became a matter of life or death to the Servian nation; or mention of the bitter press campaigns in both countries, that aroused suspicion, anger and revenge on both sides. No hint is given that it was quite as possible for the Servians to believe that Austria was planning to destroy their state, as it was for Austrians to suspect Servia of plotting to disrupt the Austro-Hungarian monarchy. The author has a chapter on "The Great Russian Propaganda in Galicia Bukovina and the Northwest District of Hungary before the War," but he enters upon no intelligent study of the Russo-Austrian economic and commercial competition in the Balkans.

Another weakness in his argument lies in the failure to discriminate between the acts of religious and other societies, and of individuals, and those of the government. Accusations against rulers and men at the head of governments are easy of inference, but most difficult to prove. That the Russian government should be held responsible for the activities of the "Slavic Benevolent Society," of the Russian clericals and of Count Wladimir Bobrinski or other Pan-Russians, does not necessarily follow, any more than that the German government should be held accountable for all the deeds and propaganda of the Pan-Germans. Nor is the evidence that certain members of the Narodna Odbrana, a Servian secret society, are shown to have organized the attempt on the life of the Archduke, sufficient proof that the Servian government and nation were behind the movement.

And Herr Ludwig has evidently not a high estimate of the intelligence of his readers, for he tells them what to think on each point at issue and puts in italics every sentence that seems important to him. He expects to convince the world of the intrinsic wickedness and corruption of the Servian nation by printing a list of sixteen murders of royal or public characters, committed in that country between the tenth and the twentieth centuries, of which, however, only three have occurred since the sixteenth century. It is not improbable but that, with an equal display of industry, one could compile a similar list of political or dynastic crimes perpetrated in the neighboring kingdoms of Russia, Turkey and Austria during the same period. Even in the most recent times these greater nations have not been entirely free from crimes of a political nature.

The chapter on the "Sarajevo Trial" contains a good deal of interesting information new to American readers and would have been the author's most valuable contribution but for his inability to sift the

evidence with clearness and discrimination. He accepts the unconfirmed testimony of criminals and witnesses and the statements of the prosecuting attorney without question. He shows that all the young men under trial for the royal murders were under age, and that all the witnesses on the origin of the crime were students, minor officials, persons of little reputation or importance and Austrian police spies. The existence of war between Austria and Servia prevented the bringing in of any reliable Servian witnesses, or of any important personages intimately acquainted with the work of the "Narodna Odbrana"—the secret society chiefly implicated in the conspiracy against the Archduke Franz Ferdinand. On the testimony of such witnesses and without waiting for the test of a higher court where the Servians might have an opportunity of entering a defense, the author is prepared to accept the pronouncement of the prosecuting attorney that "Servian state ministers, high officers of the army and the Servian Crown Prince himself had had personal and frequent intercourse with the hired murderers of the Austro-Hungarian Crown Prince," that Servia was the instigator of the murder," and that Servia "had been instigated by another higher up, by the despotic Empire of the Czar." But no valuable evidence is produced in the author's account of the trial to prove the complicity of Russia, of the Servian government or of its ministers of state. The only thing that can be said to have been established, as a result of the deliberations on this case, is that the plot probably originated with certain members of the "Narodna Odbrana" and some officers in the Servian army. The young boys who committed the dastardly attack on the Archduke and his wife, were their tools acting under the excitement of national hatred, conspiracy and a misguided spirit of patriotism. The condemnation of the Servian Crown Prince is based on the statement of one of the youthful criminals that he was received in audience by the Crown Prince when in Belgrade a month before the assassination, and on the testimony of an unnamed witness who claimed that the Crown Prince had received two students from Croatia during a student convention at Belgrade in 1912, one of whom—Luca Jukic—made an attempt later to take the life of Baron Skerlec Ban of Croatia. All travelers to Servia and Montenegro know how easy it is to secure an audience with members of the royal families of those countries. And it is not beyond the bounds of probability, that a prominent member of the "Narodna Odbrana" might have introduced the young revolutionist to the Prince in order to impress the student with the importance of his task, without the Prince in any

way being cognizant of the contemplated plot. Prosecuting attorneys may point the finger of accusation at the Servian royal family on such unsupported evidence, but it is far from probable that any court of law would pass sentence on the Crown Prince without further evidence from more credible and important witnesses concerning the nature of the interviews and the connection of the Prince and the government with the "Narodna Odbrana" and the Servian conspirators named in the notes of the trial.

This volume proves again the futility of the numerous attempts to explain: "Why England is at war," "Germany's case," or "Austria's position" without the proper background of historic knowledge and a serious attempt at modern research. What Americans want—what all fair-minded persons desire—is not a hasty and untested statement of Austria's case or a polemic in defense of Servia, but a thorough, impartial and scientific study, based as far as possible on official sources and documents, of the whole complicated situation and the events leading up to the murder of the Archduke. As such a work cannot be performed successfully until some time after the war is over, it will be better to withhold final judgment in the Austro-Servian controversy for the present.

N. DWIGHT HARRIS.

Les Finances de Guerre de L'Angleterre. By GASTON JÈZE, Professeur-adjoint a la Faculté de Droit de L'Université de Paris. (Paris: Giard et Brière. 1915. Pp. 248.)

One of the results of the European war has been an extraordinary output of new publications dealing with almost every conceivable question to which the great conflict has given rise. Most of them so far have been of a rather popular character and for the most part polemic. The present study by an acknowledged master in the field of public finance is a notable exception in this respect. It is neither controversial nor popular in character, but is a serious study of English war finance and it bears the evidences of careful research and learning which characterize the numerous publications which its distinguished author has brought out in recent years. While the present study is not a general treatise on war finance, it is by no means without observations on what is and what is not sound financial policy in time of war. And although primarily a study of present English war finance, it is not wholly so; as a suitable background for the present study the

author has compared the financial policies and expedients of the British government during various previous wars with those adopted since the outbreak of the present conflict.

M. Jèze bestows high praise on the British government in general and on the chancellor of the exchequer, in particular, for the wisdom which they have shown in the measures adopted for obtaining the huge sums necessary for carrying on a war of such tremendous magnitude as that now in progress. The decision of the government not to resort to the expedient of issuing paper money and not to rely wholly upon loans, but to employ as far as possible the power of taxation and thus compel the present generation to bear a large portion of the burden, he commends as one of obvious justice and wisdom.

On August 8, 1914, Parliament voted a credit of \$500,000,000, which was followed by another vote in November of \$1,125,000,000. These votes were remarkable, says M. Jèze, for two reasons; first, because of the amount—it was the largest war appropriation ever made; second, because it was granted to the government in a lump sum and without specification as to the purposes for which it was to be used. In previous wars it had been the custom of Parliament in voting war appropriations to limit their use exclusively to cover expenditures of military and naval operations in the strictest sense of the word. The votes of 1914, on the contrary, authorized the government to use the sums granted for all expenses resulting from a state of war, *i.e.*, for the cost of all measures which might be adopted by it for the defense of the country. Thus for the first time the House of Commons surrendered, to a large degree, its power of control and gave the government *carte blanche* to proceed as its judgment dictated. This M. Jèze thinks, was a wise decision and the fact that the November appropriation was voted four months after the beginning of the war without a word of protest by any member of the opposition shows that the confidence in the government was complete.

The enormous sums thus voted were raised in two ways: by increased taxes and by a loan. The rates on incomes and the surtax were doubled, the excise tax on beer was increased and so was the duty on tea. The succession tax and the tax on alcohol were untouched as they had already been raised several years ago, nor were the taxes on wines and sugar—wines for reasons of public policy (the chief sources being France and Portugal), sugar because the war had limited the English supply (much of which had come from Germany and Austria). It was estimated that the increased rates on incomes, beer, and tea would

bring in about \$300,000,000 a year. The remainder (\$1,750,000,000) was raised by a loan. There was some anxiety at first as to the probable success of a loan of such huge dimensions, but on November 27, ten days after it was opened, the chancellor of the exchequer was able to announce that it had all been subscribed. It was, he said, the largest ever made in the history of the world for any purpose and the promptness with which it was taken could be regarded as a justification of the measures which the government had adopted.

JAMES W. GARNER.

A History of French Public Law. By JEAN BRISSAUD. Translated by James W. Garner. (Boston: Little, Brown and Company. 1915. Pp. lviii + 581.)

This work forms Volume IX of the Continental Legal History Series published under the auspices of the Association of American Law Schools. The *History of French Private Law* by the same author has already been translated, so that the English-speaking public is now in possession of the complete treatise of Brissaud on the institutions of his country.

After an editorial preface by Professor Freund and two extended introductions by Professor Hazeltine and Professor Willoughby, the reader will not fail to appreciate in advance the importance of this contribution to political science, consequently the reputation of the author as an investigator of legal history need not be reestablished in this brief review. Suffice it to say that we have to do with a work of recognized distinction since the date of its original publication in 1904. Coming after a series of investigators equally prominent in their day, Brissaud presents the accumulated results of the long scientific inquiry of others as well as himself.

The period covered extends from the Roman conquest of Gaul to the French Revolution, with the usual divisions into the Frankish epoch, the feudal period, and the period of monarchy. No reclassification of these phenomena can well be made at present, but the author has done well to treat the constitutional history of the church in one continued story through the whole period. This permits the student to gain perspective for the detailed work of Luchaire and others on the early monarchy. In the ordinary teaching of mediaeval history not enough attention is given to the church as a great fiscal institution, but the combined array of text and references in this work

will make that task easier. The topical method does not apply quite as well to this history of legislation or administration, but the transitions from one period to another are suitably indicated.

The volume may be described as a great arsenal of established facts fortified behind an enormous amount of literature. The textbook plan of short sections and frequent subheads does not contribute to the ease of reading, but as a work of reference, both for compact statements and for citations from the authors and sources, this volume is a treasure. The notes occupy more than one-third of the space and consist chiefly of solid authorities rather than discussions left over from the text. The labors of the translator in this part of the work must have been exacting, hence one is disinclined to comment that the constant use of the numerals instead of the century, as "in the 1700's," is a convenient mode of speech, but one which has hardly become naturalized in English print. Teachers of European history and institutions have been laid under obligation by all concerned in the publication of this series.

J. M. VINCENT.

War: Its Conduct and Legal Results. By T. BATY AND J. H. MORGAN. (New York: E. P. Dutton and Company. 1915. Pp. xxviii, 578.)

Manual of Emergency Legislation . . . Passed and Made in Consequence of the War. Edited by ALEXANDER PULLING. (London: H. M. Stationery Office. 1914. Pp. xi. 572.)

Until the publication of this work of joint authorship there was no adequate consideration of the full effect of war on the laws of England. Volumes on war in international law were, of course, legion, and the outbreak of the present conflict brought forth a flood of books concerned with the effect of the war on commercial transactions. But in the present volume, with a consistent division of subject matter, Dr. Baty reconsiders the effect of the war on private law, as well, if not better than has been done by anyone else, and Professor Morgan has written an admirable treatise on a hitherto untouched subject—war measures and the English constitution. Chief interest will probably attach to this portion of the volume.

Professor Morgan deals first with the relations between the Crown and the subject. "Whether a state of war exists within British terri-

tory," he declares, "is always a matter for judicial determination, and a mere proclamation to that effect has no authority." The military authorities must in every instance justify superseding the civil power in order to meet what they consider to be an emergency. Professor Morgan inclines to favor the old test (which he does not think discarded in English law by the *Marais* case), that the fact of the courts being able to sit is conclusive evidence that a state of war does not exist—a doctrine accepted by the supreme court of the United States in *Ex parte Milligan*.

After a clear outline of already existing laws designed to secure the defence of the realm, and the powers of the Crown at common law and under statute as to such subjects as treason, sedition, espionage, control of railways, aerial navigation, customs, requisitions, and the like, Professor Morgan takes up the new emergency legislation. Under authority from Parliament regulations have been made by order in council for temporarily limiting the sale of intoxicating liquor; for forbidding the exportation of commodities; for taking possession of any foodstuffs, compensation to be determined by arbitration; for the restriction of aliens, and for many other purposes. But the Englishman is chiefly affected by the defence of the realm act which gave his Majesty the authority, during the continuance of the war, "to issue regulations for securing the public safety and defence of the nation." These regulations meticulously forbid any act which may inure to the advantage of the enemy or hamper England in the conduct of the war. The naval and military authorities are given broad powers to take measures for defence regardless of personal or property rights. Provision was made for trial by court martial, the offender to be proceeded against as if he were a person subject to military law and had on active service committed an offence under section 5 of the army act—and this despite the fact, as Viscount Bryce declared, that the British subject is entitled, "as he always has been in times past, to have the constitutional protection of being tried by a civil court when there is a civil court there to try him."

Professor Morgan makes a careful examination of the language of the enabling acts and comes to the conclusion that in many instances the regulations are clearly in excess of the powers conferred by Parliament. Several of these objections have been obviated by the defence of the realm consolidation act, but this did not restore jealously revered constitutional safeguards or make more secure the liberty of the press. The civil courts could by writ of prohibition, in Professor Morgan's

opinion, restrain the courts martial from trying civilians for breaches of regulations that are *ultra vires*, or a writ of certiorari would issue. But in other cases the conviction would be subject to review only by the judge-advocate-general. The defence of the realm act, Professor Morgan declares, "silences the courts. It is more specious but far less restricted than martial law. Certainly never in our history has the executive assumed such arbitrary power over the life, liberty, and property of British subjects."¹

The remaining sections contributed by Professor Morgan deal with the armed forces of the Crown, military law and courts martial, the laws of war on land, annexation and acts of state and the Crown and its treaty obligations. This last chapter is an especially able treatment of the neutrality of Belgium. Dr. Baty's portions of the volume consider the laws of war at sea, alien enemies and contracts with them, trading with the enemy, and the person and property of enemies. Part V on "The Crown and the Neutral" takes up the prize court procedure, contraband, blockade, and unneutral service. Miscellaneous chapters deal with the commencement and end of war; the Moratorium, and *force majeure*.

In their preface the authors express willingness to accept "a joint and several liability for the whole of the book." In spite of the haste necessary in its preparation, however, the work is scholarly, authoritative and in many respects brilliant. Dr. Baty's conclusions concerning the status of alien enemies as litigants do not seem in all cases correct; but he did not have access to some recent decisions. A footnote missing on page 376 would probably state that M. Renault's Memorandum on the Declaration of London is, by the order in council of October 29, no longer to be regarded as an aid in construing the Declaration.

¹ It should be added that since Professor Morgan wrote these words Parliament has passed a defence of the realm amendment act (No. 1, March 16), which gives a British citizen the right to demand a jury trial. But this safeguard may be abrogated by royal proclamation in the event of "invasion or other special military emergency arising out of the present war." Offending neutrals are still punished under military law, although such cases may be transferred to a civil court at the discretion of the prosecuting officer. The first prosecution of a newspaper for the publication of a report "likely to cause disaffection" (the *London Times*, May 31), did not, therefore, take place before a court martial. This denial of a jury trial from the outbreak of the war until the amendment, called forth very few objections in the press. (See *Law Magazine and Review*, February, 1915, and *Candid Quarterly*, February, 1915.) Subsequent amendments to the defence of the realm act, as is well known, give the executive broad powers regarding munitions of war.

A number of the laws and orders in council considered by the authors are set out in appendices to their volume. All are given in the *Manual of Emergency Legislation*, which, although only covering the period up to October, makes a sizable book. Supplements are now issued at intervals, and Mr. Pulling has prepared a careful check list of the great variety of subjects considered. The regulations furnish an excellent index of the abnormality of war and the dislocation that it causes in many fields. The method of enactment, by the executive under broad grants of power from Parliament, is a marked departure from the Anglo-Saxon ideal, generally asserted but not always conveniently adhered to, that the legislature should act as definitively as possible, particularly in criminal matters. As Professor Morgan says of the defence of the realm regulations, "they are the most remarkable example of delegated legislation that this country has yet witnessed."

LINDSAY ROGERS.

Les Principes Généraux du Droit Administratif. Deuxième édition. By GASTON JÈZE. (Paris: Giard et Brière. 1914. Pp. xlvii, 542.)

The first edition of this work appeared in 1904. The present edition is largely a new treatise, its size having grown from a volume of 167 pages to one of 542 pages. It differs from the conventional treatise on the French *Droit Administratif* in that it does not deal with the constitution of the administrative system or with the general principles of administrative organization. A knowledge of these matters is assumed by the author. It contains no description of any organ, court or institution of the state, department or commune. It is mainly a study of the juridical principles which dominate the institutions of French administrative law and is based largely on the decisions of the court of cassation, the council of state and the tribunal of conflicts. It contains copious footnotes and citations of cases in which the texts of essential passages are quoted in illustration of the principles discussed. The work bears the usual evidences of wide research and learning which characterize the numerous writings of the distinguished author and altogether it is one of the most substantial contributions to the literature of French administrative law that has been made. All students of the subject will welcome the announcement of the author that "more volumes are to follow."

Three great ideas, we are told, dominated French administrative law

at the end of the nineteenth century: (1) the distinction between acts of authority and acts of management (*actes de gestion*); (2) the irresponsibility of the state when acting in its sovereign capacity or performing acts of public power and (3) the independence of the administration as over against not only the judicial courts but even the administrative courts. The first and third of these principles, which were mainly the result of historical and political conditions prevailing at the end of the eighteenth and at the beginning of the nineteenth centuries were at the beginning of the present century, the author says, in absolute contradiction with existing political economic and social conditions and it is to the honor of the council of state that it realized this fact and repudiated those dogmas. The theory of the distinction between acts of authority and acts of management has virtually been abandoned and the dogma of the irresponsibility of the state is in its last convulsions. The third principle: the independence of the administration of judicial control, is now in process of demolition at the hands of the council of state. This "secular superstition," M. Jèze maintains, entirely explicable under the monarchical and imperial systems, is too much out of harmony with the democratic regime of the reign of law to last very much longer and he shows how by its decisions the council of state is fast throwing it overboard.

Starting out with some brief observations on the nature of French administrative law in general, in the course of which he refers to the well known strictures of Dicey whose early misunderstanding and prejudice M. Jèze has done much to remove (see Dicey's preface to the last edition of his *Law of the Constitution*), the author passes to a consideration of what he calls "juridical technique:" its general notions, juridical powers, acts and situations, the force of the *chose jugée*, judicial control of legislative and administrative acts, etc. In books II and III he considers at length the notion of the public service, which he characterizes as the corner stone of French administrative law and the new conception of which has brought about the remodeling of all the institutions of the administrative law. Special attention is given to a consideration of the juridical nature of the public service, the legal character of the official relation, the legal distinction between the various categories of public officers and employees, the problem of the functionaries, with some observations on their excessive number and the need of reduction, etc. Much of the discussion of these matters is highly technical and therefore of no special interest to American students. His treatment of the subject of judicial control of legislative and administrative acts (Chap.

VIII) is probably the most interesting part of his treatise, at least to Americans. As a starting point for a discussion of this subject M. Jèze lays down the proposition that a good political and administrative organization must be subject to judicial control—that is, the individual must be allowed judicial recourse for excess of power against every act of the governing authorities whether they be legislators or executive agents.

Political control through responsible ministers is no longer regarded as sufficient. Among other reasons, it is too unwieldy; a vote of censure by parliament may be ineffective and the overthrow of a ministry is likely to be so far out of proportion to the fault that the dominant party cannot be expected to resort to so heroic a remedy. Judicial control alone can compel respect for the law and safeguard the rights of the individual. Important progress has been made in France toward the establishment of this form of control and the signs indicate a still further advance in the near future. As regards legislative acts, properly speaking, however, the right of judicial control is not yet admitted, at least not by the courts. No tribunal will presume to question the constitutionality of any act of parliament provided it has been enacted in accordance with the mode of procedure prescribed by the constitution and duly promulgated by the president. The principle of the separation of powers proclaimed at the time of the revolution still subsists, notwithstanding the fact that the particular conditions which led to its introduction have long since disappeared. The reason which moved the revolutionists to deprive the courts of their control over legislation was the memory of the opposition of the old *parlements* to the legislative reforms of Colbert, Necker, and Malesherbes and the fear that the judges of 1790 were out of sympathy with the ideas of the revolution.

To insure the success of the revolution it was therefore deemed necessary to free the legislature from every form of judicial interference. But today the republic is safely established and the French judges are fully imbued with Republican ideas. The old danger from the judiciary, therefore, no longer exists and it should be made the guardian of the constitution. The argument that a law passed by parliament is an act of sovereignty and cannot therefore be subjected to judicial control M. Jèze successfully riddles. There is nothing in the juridical nature of an act of parliament which differentiates it from an executive ordinance (*règlement*). Yet the latter are subject to judicial control and are in practice frequently nullified by the courts. The fact that they have a different authorship does not make them materially or intrinsically

different from legislative acts. Moreover, the court of cassation claims and exercises the right to disregard an act of parliament which is *formally* invalid, i.e., one which has not been passed by both chambers by the required majority at a common session and which has not been properly promulgated by the president of the republic. This distinction is not sound in logic as M. Jèze points out. If the courts may properly hold the legislature to the observance of constitutional provisions relating to the formalities of legislation it is difficult to see why they may not with equal propriety compel the legislature to respect constitutional prescriptions relating to the material content of legislation.

As yet the courts have not admitted the right of recourse in annulment for excess power against decree—laws issued by the president in pursuance of a delegation by parliament for the government of the colonies but this doctrine, M. Jèze says, appears to be undergoing change. The president, he argues, is merely an administrative agent even when he exercises by delegation the power of legislation for the colonies and decrees of this kind like other executive *règlements* should be subject to judicial control.

As has been said, the courts freely exercise the power of control over executive *règlements*, but until 1845 the council of state did not allow it in the case of *règlements* issued by the chief of state. This was explained by the political position of the king or emperor. He was a *gouvernant* not a mere administrative agent and his acts being political rather than administrative in character were not subject to judicial control, but with the advent of the July monarchy and the change in the political position of the king the courts adopted a different view and since 1845 the council of state has freely admitted the right of recourse in annulment of his acts for excess of power.

Until 1907, however, a distinction was made between simple executive *règlements* and *règlements* of public administration, that is, ordinances issued by the president upon the advice of the council of state and upon invitation of the legislature. The former were subject to judicial control; the latter being assimilated to the condition of an act of parliament were not subject to recourse for excess of power. But step by step the council of state modified its views and in 1907 it definitely decided in favor of the right of recourse and this opinion has been many times since reaffirmed.

The council of state still refuses, however, to admit the right of recourse in annulment against certain political acts of the president, known

as "acts of government." It has always maintained that there is a distinction between simple administrative acts and important measures of a high political character which the government is obliged to resort to in time of war or grave emergency. The latter cannot be subjected to judicial control. But the council of state has greatly narrowed the old theory of *actes de gouvernement* which was once so much abused, and now the number of such acts recognized by the council of state is very small. One by one they have been brought under the control of the judiciary until at present the only acts of this kind which are still free from judicial control are those relating to a state of siege and certain acts in connection with the administration of foreign affairs, and even the power of the government in respect to these matters is much limited.

The evolution of French jurisprudence in the direction of a more complete judicial control over the acts of the government has been very gratifying to the French people and the liberal attitude of the council of state, in particular, has done much to increase the popular confidence in that tribunal and to give it a place in the public esteem, which no other court or institution in France enjoys.

JAMES W. GARNER.

The Philosophy of Law. By JOSEF KOHLER. (Boston: The Boston Book Company. 1914. Pp. xliv, 390.)

What one finds in this book is, we believe, the sort of tonic that American legal thought needs. The prevailing philosophy of law in this country—for the lawyer has a philosophy, even though he be unconscious of its possession—is the eighteenth century conception of the existing legal system as something applicable to all peoples and to all conditions, something unchanging and unchangeable. Kohler, whatever be his merits or defects as a legal philosopher, is at least the implacable foe of any such notion of the nature of law, and he assaults this theory with true Teutonic vigor. Unquestionably the greatest living jurist in Germany, he is best known as a master in the field of comparative jurisprudence. This point of view leads him in the present work to emphasize the ceaseless struggle in law, the conflict between logical and illogical elements, between ideas of individual right on the one side and ideas of the social mission of law on the other. It may be that this philosophy does not, as Berolzheimer protests, contain a principle fruitful in positive application, but, upon the critical side, it is most useful.

Though Kohler classes himself as a Hegelian, he is not a Neo-Hegelian of the Feuerbach variety who said, *Der Mensch ist was er iszt*. "The notion that human culture is controlled solely by the instinctive desire for food and sexual life is one of the monstrous errors of a bygone dilettanteism." Though he adopts the results of the sociological school, he goes far beyond many of that school in his insistence upon the ethical element in legal institutions. Take, for example, his criticism of the deterministic theory of criminal justice. He points out that there is possible no true justice where man is regarded simply as the product of natural forces beyond his control. Law must view him as a responsible moral agent, and punishment, to be justified, must rest upon the idea of retribution. As a practical matter, the pure element of retribution should be separated, in the minds of the culprit and of the public, from the elements which seek the reformation of the offender of his segregation from society.

Every page of the present work sparkles with expressions characteristic of the brilliancy of its marvelous author. The man is a veritable Leibnitz of the twentieth century, with more than half a thousand writings to his credit twelve years ago, on themes ranging from Aztec law, patents and bankruptcy to aesthetic essays, lyric poems and sonatas. His very appearance is that of the man of genius, forcibly suggesting Liszt.

What a flood of light on the nature and purposes of the law of contract is cast by Kohler's chapter on the law of obligations! He points out how "without affecting individual activity too greatly," the law of contract enables men to act collectively and prevents wealth becoming immobile and unfriendly to culture. Moreover, "obligatory relations bring the future to the aid of the present." They relieve development from the hazards of time, "the step-mother of humanity." Compare for example, the interest-paying countries of western Europe with the ununsurious Orient. "The Orient does not concern itself with chance." The law of contract is the basis of free labor as opposed to slavery. It is a powerful support to ethics—it cultivates in man the spirit of faithfulness to his word, and works against arbitrary desire. The various developments of contracts, the pledge, the suretyship, joint liability, are treated in similar fashion. Philosophy and practical suggestions are interwoven throughout the whole discussion.

The author's views concerning the nature of international law are of interest to American readers at the present time. To him, international law is not true law; it lacks the sanction of the state which has not, as

yet, transcended national boundaries. Until "the powerful means necessary to enforce super-national law" are established, it is "an unconditional necessity to acknowledge the achievements of international strife. If this were not done. . . what exists could never be replaced with something else that would fulfill the demands of culture, and thus we should be plunged into the miserable conditions of anarchy and statelessness. Hence, the principle must be maintained that as long as super-national law does not advance beyond national law, the achievements of war become law, and must be acknowledged as such." Here is the crucial test for a philosophy that looks upon the end of law as the means for opening to the man of genius a field for the development of his personality, rather than as the means for allowing the personality of the average man to have its freest growth.

ORRIN K. McMURRAY.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

Library of Congress.

UNITED STATES

Conduct of the Excise Board of the District of Columbia. Report of the special committee of the United States Senate pursuant to S. Res. 522 . . . 1915. 450 p. 8°. Sen. Doc. 981. *Senate.*

Diplomatic Correspondence with Belligerent Governments relating to neutral rights and commerce. 1915. 88 p. fol. *Department of State.*

Estimated Valuation of National Wealth, 1850-1912. 1915. 20 p. 4°. *Department of Commerce, Bureau of the Census.*

Foreign Relations of the United States with the Annual Message of the President transmitted to Congress, Dec. 6, 1910, Papers relating to the. 1915. 884 p. 8°. House doc. No. 1000. *Dept. of State.*

Labor. List of United States Government Publications sold by the Superintendent of Documents, Washington, D. C. Price list 33, 3d edition. March, 1915. 36 p. 8°. *Superintendent of Documents.*

Land Forces of the United States, Report on the organization of the. 1915. 86 p. 8°. *War Dept.*

Land Grants made by Congress to Aid in the Construction of Railroads, wagon roads, canals and internal improvements together with data relative thereto, statement showing. 1915. 28 p. Oblong 4°. *Secretary of the Interior, General Land Office.*

Latin-American Trade. Report of the Latin-American Trade Committee appointed by the Secretary of Commerce, Hon. William C. Redfield, pursuant to a resolution adopted at the informal Latin-American Trade Conference called at Washington, D. C., on September 10, 1914, by the Secretary of State and the Secretary of Commerce . . . 1914. 13 p. 8°.

Minimum-Wage Legislation in the United States and Foreign Countries. Bulletin 167. Miscellaneous series No. 8. 1915. 335 p. 8°. *Department of Labor, Bureau of Labor Statistics.*

Nicaraguan Mixed Claims Commission, Report of. Transmitted . . . to the Secretary of State of the United States. 1915. 84 p. 8°.

Opium and Other Drugs, Suppression of the Abuse of. Convention and final protocol between the United States and other powers. . . . Proclaimed, March 3, 1915. Treaty series, No. 612. 1915. 32 p. 8°. *State Department.*

Pan American Financial Conference.

(1) **Address of the President of the United States** . . . Washington, D. C., May 24, 1915. 1915. 4 p. 8°.

- (2) Address of John Barrett, Director General of the Pan-American Union . . . 1915. 8 p. 8°.
- (3) Address of the Secretary of State . . . May 24, 1915. 1915. 5 p. 8°.
- (4) Address of the Secretary of the Treasury delivered at the opening session . . . May 24, 1915. 1915. 8 p. 8°.
- (5) Address of Charles S. Hamlin, Governor of the Federal Reserve Board . . . May 25, 1915. 1915. 14 p. 8°.
- (6) Address of Joseph E. Davies, chairman of the Federal Trade Commission of the United States of America . . . on Thursday, May 27, 1915. 1915. 8 p. 8°.
- (7) Address of Hon. Paul M. Warburg, member of the Federal Reserve Board . . . 1915. 11 p. 8°.
- (8) Argentina. Address of Hon. Samuel Hale Pearson . . . May 24, 1915. 1915. 4 p. 8°.
- Argentina. Memorandum on the finances of Argentina submitted . . . by the Hon. S. Hale Pearson. 1915. 7 p. 8°.
- Argentina. Memorandum submitted by Dr. R. C. Aldao . . . in support of the drafts of resolutions presented by him . . . on uniformity of commercial laws, maritime transportation, and the creation of an "International Committee of Commercial Arbitration." 1915. 15 p. 8°.
- (9) Bolivia. Memorandum on Bolivian finance. 1915. 7 p. 8°.
- (10) Brazil. Report group conference committee on banking, trade, and commerce and laws relating thereto. 1915. 14 p. 8°.
- (11) Cuba. Report of group conference committee submitted by the Cuban delegation. 1915. 14 p. 8°.
- (12) Dominican Republic. Memorandum submitted by the Hon. Francisco J. Peynado, delegate of the Dominican Republic to the Pan-American Financial Conference. 1915. 4 p. 8°.
- (13) Ecuador. Memorandum submitted by the delegation of the Republic of . 1915. 8 p. 8°.
- (14) Nicaragua. Informal memorandum submitted . . . by Hon. Pedro R. Cuadra, delegate of Nicaragua. 1915. 4 p. 8°.
- Nicaragua. Memorandum submitted by Dr. Pedro Rafael Cuadra, delegate of the Republic of . . . 1915. 8 p. 8°.
- (15) Panama. Memorandum submitted by the delegation of the Republic of Panama. 1915. 5 p. 8°.
- (16) Paraguay. Memorandum submitted by the delegation of . . . 1915. 11 p. 8°.
- (17) Remarks of Hon. William C. Redfield, Secretary of Commerce . . . 1915. 11 p. 8°.
- (18) Report of the Committee . . . on the Republic of Nicaragua, Central America. (Group conference committee.) 1915. 6 p. 8°.
- (19) Report of the general committee on uniformity of laws relating to trade, commerce, and international commercial court. 1915. 6 p. 8°.
- (20) Report of the subcommittee of the general committee on uniformity of laws relating to trade, commerce, and international commercial court, appointed to consider and report upon (1) the subjects to be dealt with by the general committee. (2) The organization necessary to carry into effect the resolutions of the conference. 1915. 4 p. 8°.

(21) Salvador. Memorandum submitted by the delegation of the Republic of . . . Thursday, May 27, 1915. 1915. 5 p. 8°.

(22) Uruguay. Effects of the European war. Memorandum submitted by the delegation of Uruguay. 1915. 17 p. 8°.

Uruguay. Questions submitted by the delegation of the Republic of Uruguay. 1915. 4 p. 8°.

Patent Office, Rules of Practice in the United States, revised July 17, 1907. (Ninth reprint August 1, 1914, with supplement.) 1915. 124 p. 8°. *Patent Office.*

Statistical Abstract of the United States, 1914. Thirty-seventh number. 1915. 720 p. 8°. House doc. 1672. *Dept. of Commerce, Bureau of Foreign and Domestic Commerce.*

The Story of the Census, 1790-1915. [1915.] 36 p. 8°. *Dept. of Commerce, Bureau of the Census.*

Tariff Acts of 1909 and 1913, Comparison of the. Showing the classifications, rates of duty and sections of the acts of Aug. 5, 1909, and Oct. 3, 1913, together with the equivalent ad valorem rates of duty on the imports for the fiscal year ending June 30, 1913. Prepared under the direction of the Ways and Means Committee by John E. Walker, asst. clerk to the committee. 1915. 344 p. 8°. *House of Representatives, Committee on Ways and Means.*

CALIFORNIA

Constitution of the State of California and Summary of Amendments, to which are appended Magna Charter, Declaration of Rights, Declaration of Independence, the Articles of Confederation and the Constitution of the United States. 1915. 347 p. 16°. *Legislative Counsel Bureau.* +

Impeachment of Hon. John L. Childs, Judge of the Superior Court of the State of California, in and for the county of Del Norte, proceedings, including the report of the assembly judiciary committee appointed to investigate charges preferred for the. 1915. 18 p. 8°. +

Industrial Welfare Commission. First Biennial Report . . . 1913-14. 1915. 123 p. 8°. +

Legislative Manual and Form Book. 1915. 105 p. 8°. *Senate Minute Clerk.*

Recreational Inquiry Committee. Report . . . 1914. 60 p. 8°.

Note: Special commission to consider the existing conditions of recreation in the state and to make recommendations therefor.

COLORADO

Domestic Disturbances, The Power and Authority of the Governor and Militia, in, a brief by Henry J. Hersey, Esq. 1915. 8 p. 8°. *Adjutant General.*

Ludlow. Being the Report of the Special Board of Officers Appointed by the governor of Colorado to investigate and determine the facts with reference to the armed conflicts between the Colorado National Guard and certain persons engaged in the coal mining strike at Ludlow, Col., April 20, 1914. 1915. 29 p. 8°. *Adjutant General.*

Wage Board. First Report . . . for the Biennial Period ending November 30, 1914. 1914. 28 p. 8°.

Workmen's Compensation Laws passed by the 20th Gen'l Assembly . . . 1915. 65 p. 8°. *Secretary of State.*

CONNECTICUT

Commission to Investigate the Advisability of Consolidating Certain State Boards and commissions, and to investigate the public health laws. Report . . . to . . . the general Assembly of 1915. 1915. 108 p. 8°.

Note: Commission appointed under provision of House bill No. 133, General Assembly, 1915.

ILLINOIS

Efficiency and Economy Committee. Report . . . 1914. 80 p. 8°.

Note: General report of the committee appointed to investigate the whole fabric of state government with a view to recommend changes looking to a more efficient administration of the same.

—— A report on the accounts of the state of Illinois, by George E. Fraser . . . 1914. 64 p. 8°.

—— A report on the administration of labor and mining legislation . . . by W. F. Dodd . . . 1914. 104 p. 8°.

—— A report on revenue and finance administration by John A. Fairlee . . . 1914. 103 p. 8°.

—— A report on supervision of corporations and related business, by Maurice H. Robinson . . . 1915. 56 p. 8°.

Handbook Illinois Legislature. Forty-ninth General Assembly. 1915. 125 p. 24°. Clerk of the House.

INDIANA

Legislative Investigating Committee Report . . . on State, educational, benevolent and correctional institutions and public buildings, departments, boards and commissions to the 69th General Assembly, 1915. 1915. 292 p. 8°.

IOWA

The Property Concepts of the Early Hebrews, by M. J. Lauré. 1915. 98 p. 8°. Studies in sociology, economics, politics and history. Vol. 4, No. 2. University of Iowa.

KANSAS

Roster of Kansas for Sixty Years. 1915. 34 p. 8°. Historical Society.

Note: Reprinted from the 19th biennial report of the Kas. State Historical Society, 1912-14.

MAINE

Documentary History of the State of Maine, V, 20, containing the Baxter manuscripts edited by James Phinney Baxter. 1914. 486 p. 8°. Historical Society.

MARYLAND

Educational Situation in Maryland by a special committee of the Board of State Aid and Charities Report on . . . 1914. 33 p. 8°. Board of State Aid and Charities.

MASSACHUSETTS

Address of His Excellency David I. Walsh to the two Branches of the Legislature of Massachusetts, Jan. 7, 1915. 1915. 58 p. 8°.

City Charters, Joint Special Committees on. Report . . . 1915. 71 p. 8°. (Senate No. 254.)

Executive Branch of the State Government, Functions, Organization and Administration of the. 1914. 513 p. 8°. *Commission on Economy and Efficiency.*

Manual for the Use of the General Court . . . 1914. 689 p. 16°. *Clerk of the Senate.*

MICHIGAN

Wages and the Conditions of Labor for Women and the Advisability of Establishing a Minimum Wage, Report of the Michigan State commission of inquiry into. 1915. 496 p. 8°. +

MINNESOTA

Minimum Wage Commission. First Biennial Report . . . Aug. 1, 1913, to Dec. 31, 1914. 1915. 55 p. 8°. +

—The Minnesota minimum wage law. Opinion of Attorney General on constitutionality of law. Decision of Oregon Supreme Court on constitutionality of Oregon law. [1915] 32 p. 8°.

Proceedings of the Second Annual Convention of the League of Minnesota Municipalities. Prepared by G. A. Gesell . . . 1914. 160 p. 8°. *University of Minnesota, General Extension Division.*

MISSOURI

Public Service Commission. Report . . . to the State senate in answer to a resolution passed Feb. 12, 1915, 48th General Assembly, 1915. 14 p. 8°. +

Note: Resolution required commission to determine whether present freight and passenger rates "are insufficient to yield a reasonable compensation for the service rendered."

NEBRASKA

The Nebraska Blue-Book and Historical Register. 1915. 989 p. 8°. *Legislative Reference Bureau.*

Revenue and Taxation, Special Commission on. 1914. 243 p. 8°.

NEW HAMPSHIRE

Children's Commission. Report . . . 1915. 136 p. 8°.

NEW JERSEY

Employers' Liability Act for . . . 1914, Report of the Employers' Liability Commission appointed for the purpose of observing the operations of the. 1915. 48 p. 8°.

Manual of the Legislature of New Jersey, 139th session, 1915. 1915. 658 p. 16°.

NEW YORK

Charges made Against the New York State Reformatory for Women at Bedford Hills, N. Y., report of the special committee . . . appointed to investigate. 1915. 29 p. 8°. *Board of Charities.*

Financial Condition of the State . . . , message from the governor relative to the. 8 p. 8°. (Senate No. 48.)

Manual for the Use of the Legislature of the State . . . 1915. . . . 1915.
1209 p. 16°. *Secretary of State.*

Public Service Commissions, Joint Legislative Committee to Investigate the final partial report . . . 1915. 42 p. 8°. (Senate No. 53.)

State Finances, Report of the [Senate] Committee on Finance of its investigation of. 1915. 9 p. 8°. (Senate No. 57.)

Telephone and Telegraph Companies . . ., **Report of the Joint Committee of the Senate and Assembly on.** 1915. 162 p. 8°. (Senate No. 49.)

NORTH CAROLINA

A Manual of North Carolina . . . for the Use of Members of the General Assembly, session 1915 . . . 1915. 356 p. 12°. *Historical Commission.*

NORTH DAKOTA

Statute Law Making with Suggestions to Draftsmen . . . 1915. 93-119 p. 8°. *University of No. Dakota.*

Note: Reprint from Quarterly Journal of the Univ. of No. Dakota.

OHIO

Judicial System of Ohio, Report of Committee to Investigate the. 1915. 8 p. 8°.

OREGON

Results of Referendum on Measures Referred to the People at Special Election, Nov. 4, 1913. All constitutional amendments adopted, and laws enacted by the people at the general election Nov. 3, 1914 . . . 1915. 738 p. 8°. *Secretary of State.*

Rural Credits Commission. Report . . . to the 28th Legislative Assembly. 1915. 35 p. 8°.

PHILLIPINE ISLANDS

Industrial Resources of the Phillipine Islands. (Panama-Pacific International Exposition Edition.) 1915. 38 p. 8°. *Bureau of Science.*

RHODE ISLAND

Manual with Rules and Orders for the Use of the General Assembly of the State of Rhode Island, 1915 . . . 1915. 410 p. 12°. *Secretary of State.*

TENNESSEE

Assessment and Taxation, Committee to Investigate. Report . . . 1915. 108 p. 8°.

Note: Committee appointed in virtue of Senate joint resolution of January 26, 1915.

VIRGINIA

A Summary of Tax Systems, Boards and Methods of Equalization of the Several States. Compiled by Lewis H. Machen. 1915. 29 p. 8°. *Legislative Reference Bureau.*

WASHINGTON

[Legislative Manual 1915.] 1915. 224 p. 24°. *Secretary of State.*
Rural Credit, Coöperation and Agricultural Organization in Europe. Report of Ralph Metcalf and Clark G. Black, Washington members of the American Commission which studied European conditions in 1913. 1915. 293 p. 8°.

WISCONSIN

Report Upon the Survey of the University of Wisconsin . . . 1914. 957 p. 8°. *Board of Public Affairs.*

Note: Contains information on general and educational policies, lands and buildings, business organization, W. H. Allen's report and University comment thereon, and E. C. Branson's report.

WYOMING

Official Directory of Wyoming, 1915. 1915. 53 p. 8°. *Secretary of State.*

ASSOCIATIONS

National Association of Railway Commissioners. Proceedings of the 26th annual convention, held at Washington, D. C., Nov. 17-20, 1914. 1915. 477 p. 8°. +

AUSTRIA-HUNGARY

Austro-Hungarian Red Book. Official English edition with an introduction. New York. 98 p. 8°. *Ministerium des. K. und K. Hauses und. des Aussern.*

CANADA

European War, Copies of Proclamations, Orders in Council and Documents relating to. Ottawa. 1915. 249, 142 p. 8°. *Secretary of State.*

The Unexploited West. A Compilation of all Available Information as to the Resources of Northern and Northwestern Canada. By E. J. Chambers, Major, Corps of Guides. Published under the direction of . . . Supt. Railway lands branch. 1914. 360 p. 8°. *Department of the Interior.*

Note: Contains bibliography on Canadian Northwest.

EGYPT

Annuaire Statistique de L'Egypte. 1914. (6^{me} Année). Le Caire, 1914. 620 p. 4°. Prix: Broché 200 millièmes. *Ministère des Finances, Dept. de La Statistique générale.*

FRANCE

La Situation de Commerce en France, et sur la condition actuelle du petit commerce, Rapport fait au nom de la commission du commerce et de l'industrie chargée de procéder a une enquête sur la. Par M. Laudry, Député. No. 3432 Chambre des Députés dixieme legislature session de 1914. Paris. 1914. 697 p. 4°. *Chambre des Députés.*

Salair Minimum pour Tous les Ouvriers et Employés dans les Mines et Minieres, Rapport fait . . . sur la proposition de loi . . . tendant à l'établissement d'un. Par M. Émile Basly. No. 105 Chambre des Députés onzieme legislature, session de 1914. [1915]. 38 p. 4°. *Chambre des Députés.*

Taxe du Pain et de la Vlande, Rapport fait . . . au nom de la Commission de L' Agriculture sur le projet de loi relatif a la. Par M. Victor Boret. No. 109. Chambre des Députés. Onzième Législature, session de 1914. Paris, 1914. 161 p. 4°. *Chambre des Députés.*

GREAT BRITAIN

Belgian Refugees in this Country, Minutes of evidence taken before the departmental committee appointed by the president of the Local Government Board to consider and report on questions arising in connection with the reception and employment of the. 1915. 224 p. fol. [cd. 7779.] Price 1s. 10d. *Local Government Board.*

Belligerents, Correspondence Between His Majesty's Government and the United States Government respecting the rights of. 1915. 29 p. fol. [cd. 7816.] Miscellaneous No. 6 (1915). Price 3d. *Foreign Office.*

British Prisoners of War and Interned Civilians at Certain Places of Detention in Germany, Reports by United States officials on the treatment of. 1915. 22 p. fol. Miscellaneous No. 11, 1915. [cd. 7861.] Price 3d. *Foreign Office.*

Note: In continuation of Miscellaneous, No. 7, 1915: [cd. 7817].

Censorship, Memorandum on the. 1915. 6 p. fol. [cd. 7679.] Price 1d. *War Office.*

Dominions Royal Commission. Fourth interior report of the . . . on the natural resources, trade, and legislation of certain portions of His Majesty's dominions. 1915. 20 p. fol. [cd. 7711]. Price 4d. *Dominions Royal Commission.*

Emergency Legislation . . . Passed and Made in Consequence of the War to Sept. 30, 1914, Manual of. Edited by Alexander Pulling, C. B. Published by authority. 1914. 572 p. 8°. Price 3s. 6d.

Employment for Sailors and Soldiers Disabled in the War, Report of the committee appointed by the president of the Local Government Board upon the provision of. 1915. 8 p. fol. [cd. 7915.] Price 1½d. *Local Government Board.*

European War, Collected Diplomatic Documents Relating to the Outbreak of the European War. 1915. 561 p. 8°. Miscellaneous No. 10 (1915). [cd. 7860]. Price 1s. *Foreign Office.*

Note: Contains the diplomatic papers relating to the present European war, of the following countries, Great Britain, France, Russia, Belgium, Serbia, Germany, and Austria-Hungary and in addition miscellaneous diplomatic correspondence published subsequent thereto.

German Outrages, Report of the Committee on Alleged. 1915. 38 p. fol. [cd. 7894]. Price 6d. *Committee on Alleged German Outrages.*

— **Appendix (to above report)** 1915. 196 p. fol. [cd. 7895.] Price 1s. 9d.

Naval and Military Despatches Relating to Operations in the War. September, October and November, 1914. With list of honours and rewards conferred. 1914. 89 p. 8°. Price 2d. *Admiralty and War Offices.*

Official Press Bureau, Memorandum on the. 1915. 4 p. fol. [cd. 7680.] ½d. *War Office.*

Prisoners of War and Interned Civilians in the United Kingdom and Germany Respectively, correspondence between His Majesty's government and the United

States ambassador respecting the treatment of. 1915. 87 p. fol. Miscellaneous No. 7 (1915). [cd. 7817.] Price 9½d. *Foreign Office.*

Note: The above publication continues the information found in Miscellaneous No. 5 (1915): [dc. 7815].

Prizes Captured During the Present European War, Accession of Russia to the convention of November 9, 1914, between the United Kingdom and France relating to. London, March 5, 1915. 1915. [4] p. 8°. [cd. 7858.] Treaty series. 1915. No. 4. Price ½d. *Foreign Office.*

Shipbuilding, Munitions, and Transport Areas . . . Copy "of report and statistics of bad time kept in." 1915. 31 p. fol. *Treasury Chambers.*

Note: Contains official returns as to actual hours worked on the preparation of war materials and information in regard to effect of alleged excessive drinking by the workmen in charge.

The Sinking of the German Cruiser "Dresden" in Chilean Territorial Waters, Notes exchanged with the Chilean minister respecting. 1915. 4 p. fol. [cd. 7859.] Misc. No. 9 (1915). Price ½d. *Foreign Office.*

State Papers, 1909-1910 British and Foreign, Vol. 103. 1914. 1117 p. 8°. *Foreign Office.*

Statistical Abstract for the British Empire . . . from 1899 to 1913. Eleventh number. 1915. 306 p. 8°. [cd. 7827.] Price 1s 3d.

Violation of the Rights of Nations and of the Laws and Customs of War in Belgium, Reports on the . . . Preface by J. Van Den Heuvel, Minister of State . . . London. 1915. 113 p. 80°. Price 6d. *Foreign Office.*

Note: The above is a translation of the reports of the official commission of the Belgian government detailed to investigate alleged outrages and atrocities connected with the present war and is "published on behalf of the Belgian legation" by the British government.

War Risk Insurance Associations, Text of Agreements made Between His Majesty's Government and the. 1915. 28 p. fol. [cd. 7838.] Price 3d. *Board of Trade.*

NEW ZEALAND

Official Year-Book, 1914. Twenty-third year of issue . . . Wellington. 1914. 1017 p. 8°. *Registrar General.*

Statistics of the Dominion of New Zealand for the year 1913 . . . Vol. 3, Production, finance, accumulation. Postal and telegraph. Wellington. 1914. 248 p. fol. *Government Statistician.*

NORWAY

Statistisk Aarbok for Kongeriket Norge 34te Aargang. 1914. . . . Kristiania. 1915. 196 p. 8°. *Statistiske Centralbyraa.*

QUEENSLAND

Statistics of the State of Queensland for the year 1913 (in ten parts and index). Brisbane. 1914. Various paging. Fol. *Government Statistician.*

SO. AUSTRALIA

Statistical Register, 1913. Compiled from official records. Adelaide. 1914. (700) p. fol. *Government Statist.*

SWEDEN

Pensionering af Statens Järnvägars och Telegrafverkets extra personal, Betänkande afgivet af de af Statsrådet och chefen för Kungl. Civildepartementet den 12 September 1913 Tillkallade sakkunniga för verkställande af Utredning angående. Stockholm. 1914. 142 p. 8°. *Civildepartementet*.

Statistisk Årsbok . . . 1915 . . . Stockholm 1915. 350 p. 8°. *Statistiska Centralbyrån*.

UNION OF SO. AFRICA

Railway Commission of Inquiry, November, 1914, Report of the. Pretoria. 1915. 173 p. fol.

Note: Inquiry limited to consideration of labor conditions on railroads in South Africa.

Rebellion and the Policy of the Government with Regard to its Suppression, Report on the. Pretoria. 1915. 78 p. fol. Price 2s.

Rebellion, Report of the Select Committee on. Capetown. 1915. 369 p. 8°.

VICTORIA

Victorian Year-Book, 1913-14 . . . Thirty-fourth issue. Melbourne [1915] 891 p. 8°. *Government Statist*.

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS.

COLONIES

Books

- Goethals, G. W.* Government of the Canal zone. Princeton: Univ. Press.
Le Sueur, Gordon. Germany's vanishing colonies. London: Everett. Pp. 190.
Lucas, Sir Charles. Historical geography of the British dominions, Vol. IV. South Africa. Part II. History of the union of South Africa. New York: Oxford Univ. Press.
Lucas, C. P. The British Empire. New York: Macmillan.
Müller-Holm, Ernst. Der englische Gedanke in Deutschland. Zur Ubmehr des Imperialismus. München: E. Reinhardt. 1915. Pp. 148.
Reis, Charles. The government of Trinidad. London: Sweet & M.

Articles in Periodicals

- German Colonies.** La politique coloniale allemande et le conflit européen. *Christian Schefer.* Rev. d. Sci. Pol. 15 Avril, 1915.
Philippines. The Mohammedan problem in the Philippines. *John P. Finley.* Jour. of Race Dev. April, 1915.

CONSTITUTIONAL LAW

Books

- Cameron's Canadian constitution.* London: Butterworth. Pp. 840.
Coming, John. How China ought to be governed. Singapore: Kelly & Walsh. Pp. 162.
Dealey, J. Q. Growth of American state constitutions. Boston: Ginn.
Hammond, B. E. Bodies politic and their governments. Cambridge: Univ. Press.
Hatschek, Jul. Das Parlamentsrecht des Deutschen Reiches. Berlin: G. J. Göschen.
Lodge, H. C. The democracy of the Constitution. New York: Scribner.
Tucker, H. St. G. Limitations on the treaty-making power. Boston: Little, Brown.
Young, J. T. The new American government and its work. New York: Macmillan.

Articles in Periodicals

- Blue Sky Laws.** The constitutionality of "blue sky" laws. *Robert S. Spilman.* Am. Law Rev. May-June, 1915.

China. Reform in China. *Frank J. Goodnow*. Am. Pol. Sci. Rev. May, 1915.

Civil Service. Sur le statut des fonctionnaires. *R. de La Grasserie*. Rev. Gén. d. Droit, d. la Légis. et d. la Juris. Jan.-Fev. and Mars-April, 1915.

Common Carriers. The liability of the common carrier as determined by recent decisions of the United States Supreme Court—II. *Edwin C. Goddard*. Col. Law Rev. June, 1915.

Constitutional Amendment. Changing the Constitution. *Edward C. Eliot*. Yale Law Jour. June, 1915.

Constitutional Amendment. Tinkering with the Constitution. *Jos. R. Long*. Yale Law Jour. May, 1915.

Danbury Hatters' Case. The Danbury Hatters' case. *Theodor Megard*. Am. Law Rev. May-June, 1915.

Federal Trade Commission. The Federal Trade Commission. *Michael F. Gallagher*. Ill. Law Rev. May, 1915.

Interstate Comity. Full faith and credit vs. comity and local rules of jurisdiction and decision. *Henry Schofield*. Ill. Law Rev. May, 1915.

Interstate Commerce. The power of the state over commodities excluded by Congress from interstate commerce. *Lindsay Rogers*. Yale Law Jour. May, 1915.

Interstate Commerce. The validity, under the commerce clause, of state or municipal taxation of the sale of goods which have been moved in interstate commerce. *Christopher B. Garnett*. Va. Law Rev. March, 1915.

Interstate Commerce Commission. The rise of the Interstate Commerce Commission. *Bruce Wyman*. Yale Law Jour. May, 1915.

Jefferson Davis. The trial of Jefferson Davis, an interesting constitutional question. *David K. Watson*. Yale Law Jour. June, 1915.

Liberty of Press. The liberty of the press. Scot. Rev. Spring, 1915.

Martial Law. Martial law in England. Can. Quart. Feb., 1915.

Trust Legislation. Recent federal trust legislation. *George A. Stephens*. S. Atlan. Quart. April, 1915.

Uniform Legislation. Report made to the conference, by its committee on uniformity of judicial decisions in cases arising under uniform laws. Am. Bar Asso'n Jour. Jan., 1915.

INTERNATIONAL LAW AND DIPLOMACY

Books

Angell, N. America and the new world-state. New York: Putnam.

Burgess, J. W. The European war of 1914. Chicago: McClurg.

Chambers, Howard. European entanglements since 1748. New York: Longmans.

Edleston, R. H. Italian neutrality. London: Heffer. Pp. 72.

Gauvain, A. Les origines de la guerre européenne. Paris: Colin. Pp. 342.

Hettner, Alfr. England's Weltherrschaft u. der Krieg. Leipsig. B. G. Teubner.

Hodges, H. G. The doctrine of intervention. Princeton: Banner Press.

Hull, W. I. The Monroe Doctrine: national or international? New York: Putnam. +

Köhler, Frz. Der neue Dreibund. München: J. F. Lehmann's Verl.

Kylie, Edward. Who caused the war? A study of the diplomatic negotiations leading to the war. London: H. Milford. Pp. 88.

Liszt, Frz. Das Völkerrecht. Systematisch dargeseht. 10, umgearb. Aufl. Berlin: J. Springer. 1915. Pp. xii, 560. — 2.9¹² 1.13

Luke, Charles H. The war and the parting of the ways. A short study of the future of the British Empire in relation to the great war. London: Low. Pp. 124. — oa 13.1.13

MacCorkle, W. A. The Monroe Doctrine in its relation to the republic of Haiti. Washington: Neale Pub. Co.

Meyer, Henry R. After the war: the changes and chances that will come with peace. London: Simpkin. Pp. 180.

Münsterberg, H. The peace and America. New York: Appleton.

Namier, Lewis B. Germany and eastern Europe. London: Duckworth. Pp. 144.

Neuburg, J. Kriegsvölkerrecht u. andere völkerrechtliche Verträge. Mannheim: J. Bensheimer's Verl. —

Oppenheim, L. Collected papers of John Westlake on public international law. Cambridge: Univ. Press.

Picciotto, Cyril M. The relation of international law to the laws of England and of the United States of America. New York: McBride, Nast. +

Ponti, E. La guerra dei popoli e la futura confederazione Europea. Milano, Italy: Ulrico Hoepli.

Rohrbach, P. Germany's isolation. Chicago: McClurg.

Sarolea, C. The Anglo-German problem. New York: Putnam.

Schäfer, D. Deutschland u. England in Gee- u. Weltgeltung. Leipzig: Wolff. 1915. Pp. vii, 192.

Slater, Gilbert. Peace and war in Europe. London: Constable. Pp. 128.

Updyke, F. A. The diplomacy of the war of 1812. Baltimore: Johns Hopkins Press.

Van Houtte, Paul. The pan-Germanic crime. Impressions and investigations in Belgium during the German occupation. London: Hodder. & S. Pp. 192.

Van Zile, E. S. The game of empires. New York: Moffat, Yard.

Wazweiler, Emil. Der europäische Krieg. Hat Belgien sein Schicksal verschuldet? Zürich: Art. Institut Orell Fussli. 1915. Pp. vii, 276.

Articles in Periodicals

Alsace. L'Alsace pendant les cinq premiers mois de la guerre. *Oscar Vogelweith.* Rev. d. Sci. Pol. 15 Avril, 1915.

Alsace-Lorraine. Elsass-Lothringen dem Reiche? *D. F. Geigel.* Annal. d. Deutschen Reichs. No. 1. 1915.

Asia Minor. The partition of Asia Minor. *J. B. Firth.* Fort. Rev. May, 1915.

Balkans. The Balkan States and the war. *N. Jorga.* Quart. Rev. April, 1915.

Balkans. The territorial ambitions of the Balkan States. *Alfred Sharpe*. Nine. Cent. April, 1915.

Belgium and Luxemburg. The international status of the Grand Duchy of Luxemburg and the Kingdom of Belgium in relation to the present European war. *Theodore P. Ion*. Mich. Law Rev. April, 1915.

Bulgaria. Bulgaria and entente diplomacy. *E. J. Dillon*. Fort. Rev. May, 1915.

Denmark. Le Denmark et la guerre. *L.-V. Birck*. Rev. Pol. Int. Jan.-Fév., 1915.

Germany. Germany, Africa, and the terms of peace. *Harry H. Johnston*. Nine. Cent. April, 1915.

Hague Conference. La politique Allemande à la première conférence de la Haye. *M. B. Kotsin*. Paix par le Droit. 10-25 Avril, 1915.

Hague Conventions. The Hague and other war conventions in spirit and in practice. *Thomas Barclay*. Nine. Cent. May, 1915.

Holy War. La guerre sainte islamique. *O. Houdas*. Rev. d. Sci. Pol. 15 Avril, 1915.

International Law. Zur Lehre von den Grundlagen des Völkerrechts. *P. Schoen*. Archiv f. Rechts- u. Wirtschaftspril. April, 1915.

International Law. The supposed chaos in the law of nations. *Th. Baty*. Pa. Law Rev. June, 1915.

International Personality. Persone giuridiche internazionali. *Antonio Longo*. Riv. d. Dir. Pub. Marzo-Aprile, 1915.

Ireland. L'Irlande et la guerre. *Paul Hemelle*. Rev. Pol. et Par. 10 Mars, 1915.

Italy. Italy and intervention. *Gino Calza-Bedolo*. Nine. Cent. April, 1915.

Italy. Le ministère Salandra et la guerre. *Combes de Lestrade*. Rev. Pol. et Par. 10 Mars, 1915.

Italy. La mission de Bülow à Rome. *Carlo Bazz*. Rev. Pol. et Par. 10 Mars, 1915.

Italy. La neutralité italienne. *Jean Alazard*. Rev. Pol. Int. Jan.-Fév., 1915.

Japan. The Japanese in China. *William Blane*. Nine. Cent. May, 1915.

Japan. Le Japon entre l'Europe et la Chine. *André Chèradame*. Rev. Pol. et Par. 10 Mars, 1915.

Merchant Vessels. The transfer of merchant vessels from belligerent to neutral flags. *James W. Garner*. Am. Law Rev. May-June, 1915.

Netherlands. Dutch neutrality. *En Vedette*. Fort. Rev. May, 1915.

Neutrality. The law of neutrality and the present war. *John P. Bate*. Quart. Rev. April, 1915.

Neutrality. Neutrality: the United States note. *Can. Quart. Rev.* Feb., 1915.

Neutrality. President Wilson's neutrality: an American view. *Lindsay Rogers*. Contemp. Rev. May, 1915.

Neutralization. The neutralization of the sea. *Norman Angell*. N. Am. Rev. May, 1915.

Orient. Problems of diplomacy in the near east. *Ontis*. Fort. Rev. April, 1915.

- Prize.** The destruction of neutral prizes and the German prize code. *C. H. Huberich*. Ill. Law Rev. May, 1915.
- Prize.** The French law of prize. *Charles Henry Huberich*. Yale Law Jour. June, 1915.
- Roumania.** Roumania's attitude and future. *Politicus*. Fort. Rev. May, 1915.
- Scandinavia.** La neutralité scandinave. *Frédéric Bajer*. Rev. Pol. Int. Jan.-Fév., 1915.
- Servia.** Austria-Hungary and Serbia. *George Macaulay Trevelyan*. N. Am. Rev. June, 1915.
- Slavs.** The Southern Slav question. *Norman Dwight Harris*. Am. Pol. Sci. Rev. May, 1915.
- Sweden.** The neutrality of Sweden. *Edinb. Rev.* April, 1915.
- Treaties.** Der Schutz Vertragsverbindlichkeit in der Verfassung der amerikanischen Union. *Willi Möller*. Blät. f. Vergl. Rechtsw. u. Volkswirts. Feb.-März, 1915.
- Triple Alliance.** L'Alliance Austro-Allemande et la Triple-Alliance. *Louis Eisenmann*. Rev. Pol. et Par. 10 Avril, 1915.
- Turkey.** The future of Turkey. *Politicus*. Fort. Rev. April, 1915.
- Turkey.** La Turquie et la guerre. *J. Aulneau*. Rev. Pol. et Par. 10 Avril, 1915.
- Vatican.** France and the Vatican. *Ernest Dimmet*. Nine. Cent. May, 1915.
- War.** L'Allemagne et le droit des gens. *J. Lefort*. Rev. Gén. d. Droit, d. la Légis. et d. la Juris. Mars-Avril, 1915.
- War.** Les Arabes, le Khalifat et la guerre. *André Dubosco*. Rev. Pol. et Par. 10 Mai, 1915.
- War.** Die Aufgaben der politischen Wissenschaft im Zeichen des Krieges. *Richard Schmidt*. Zeits. f. Pol. VIII, 1 and 2. 1915.
- War.** Considérations sur les origines de la guerre. *Jules Andrássy*. Rev. Pol. Int. Jan.-Fév., 1915.
- War.** Der deutsche Auslieferungsverkehr von dem Kriege. *Wolfgang Mettgenberg*. Annal. d. Deutschen Reichs. No. 1. 1915.
- War.** Le droit des gens et la guerre de 1914. *Louis Eisenmann*. Rev. Pol. et Par. 10 Mai, 1915.
- War.** Le droit des gens et la guerre de 1914. *William Loubat*. Rev. Pol. et Par. 10 Mars and 10 Avril, 1915.
- War.** De droit à la réparation des dommages de guerre. *Joseph Barthélemy*. Rev. Pol. et Par. 10 Mai, 1915.
- War.** The effect of war on the operation of statutes. *Charles Noble Gregory*. Harv. Law Rev. May, 1915.
- War.** Effets de la guerre sur le contrat de bail à Loyer. *L. B.* Rev. Gén. d. Droit, d. la Légis. et d. la Juris. Mars-Avril, 1915.
- War.** Einwirkung des Krieges auf Schuldverhältnisse nach italienischen Recht. *Ernst Frankenstein*. Blät. f. Vergl. Rechtsw. u. Volkswirts. Feb.-März, 1915.
- War.** Die Entwicklung der deutschen und der englischen Volkswirtschaft im neunzehnten Jahrhundert und der Weltkrieg. *A. Sartorius Freih.* Zeits. f. Pol. VIII, 1 and 2. 1915.

War. Influence de l'état de guerre sur les contrats de location de futailles. *Jules Valéry*. Rev. Gén. d. Droit, d. la Legis. et d. la Juris. Jan.-Fév., 1915.

War. Kriegsversorgungsanspruch der Hinterbliebenen von Beamten. *M. Reindl*. Annal. d. Deutschen Reichs. No. 1. 1915.

War. Le Livre rouge austro-hongrois. *Auguste Gauvain*. Rev. d. Sci. Pol. 15 Avril, 1915.

JURISPRUDENCE

Books

Abdur-rahmān, Rechtsanw. Fine kritische Prüfung der Quellen des islamitischen Rechts. New York: Stechert. 1914. Pp. xix, 216.

Binder, Jul. Rechtsbegriff u. Rechtsidee. Bemerkungen zur Rechtsphilosophie Rudolf Stammers. Leipzig: A Deichert Nachf. 1915. Pp. xvi, 316.

Danjon, D. Traité de droit maritime. Paris: Libr. gén. de droit et de juris. 1914. Pp. 703.

Malnoury, L. L'État de guerre et ses conséquences juridiques. Besançon: Impr. spéciale du "Bulletin des tribunaux de commerce." 1914. Pp. xxxiv, 92.

Mayer, Bernh. Das Privatrecht des Krieges in materieller u. formeller Beziehung. München: J. Schweiker. 1915. Pp. vii., 283.

Rehme, Paul. Geschichte des Handelsrechts. Leipzig: O. R. Reisland. 1914. Pp. 25, 260.

Reichel, Hans. Gesets u. Richterspruch. Zur Orientierung üb. Rechtsquellen- u. Rechtsanwendungslehre der Gegenwart. Zürich: Art. Institut Orell Füssli. 1915. Pp. vii, 155.

Thibault, A. et Saillard, A. Précis de droit. Les pouvoirs publics. Organisation et attributions des pouvoirs législatif, exécutif et judiciaire. Nancy-Paris: Berger-Levrault. 1914. Pp. xi, 472.

Articles in Periodicals

Argentine Code. The Argentine civil code. *P. J. Eder*. Am. Bar Asso'n Jour. April, 1915.

Church Property. Acquirement of real property by American churches. *Carl Zollman*. Yale Law Jour. May, 1915.

Commercial Law. The evolution of commercial law. *Isaac A. Hourwich*. Am. Bar Asso'n Jour. April, 1915.

Criminal Law. Some sociological aspects of criminal law. *Harriette M. Dilla*. Mich. Law Rev. May, 1915.

Criminal Procedure. A critical survey of certain phases of trial procedure in criminal cases. *Howard A. Lehman*. Pa. Law Rev. May and June, 1915.

Custom. Der Begriff der Sitte. *Ernst Weigelin*. Archiv f. Rechts u. Wirtschaftsphil. April, 1915.

Custom. La coutume d'Angleterre. *René de Kérallain*. Rev. Gén. d. Droit, d. la Legis. et d. la Juris. Jan.-Fév., 1915.

Custom. Sitte und Sittlichkeit. *Josef Kohler*. Archiv f. Rechts- u. Wirtschaftsphil. April, 1915.

Ferries. Origin and monopoly of ancient ferries. *Douglass D. Storey*. Pa. Law Rev. June, 1915.

- First Offenders.** An unconsidered element in the probation of first offenders. *Albert Kocourek.* Jour. of Crim. Law and Crim. May, 1915.
- Indeterminate Sentences.** Indeterminate sentence, release on parole and pardon. *Edwin M. Abbott.* Jour. of Crim. Law and Crim. May, 1915.
- Jail.** The solution of the jail problem. *Louis N. Robinson.* Jour. of Crim. Law and Crim. May, 1915.
- Judicial Procedure.** Eliminating archaic features of execution process in Pennsylvania. *Shippen Lewis.* Pa. Law Rev. May, 1915.
- Judicial Procedure.** Judicial administration. *Esra Ripley Thayer.* Pa. Law Rev. May, 1915.
- Judicial Procedure.** Studies in English civil procedure. 2. The rule-making authority. *Samuel Rosenbaum.* Pa. Law Rev. April, 1915.
- Law and Public Opinion.** Law and Public opinion. *Noble C. Butler.* Am. Law Rev. May-June, 1915.
- Magna Carta.** Magna Carta. *H. Hensley Henson.* Edinb. Rev. April 1915.
- Pardoning Power.** Does a pardon blot out guilt? *Samuel Williston.* Harv. Law Rev. May, 1915.
- Parole System.** Parole an institution of the future. *B. W. Brown.* Jour. of Crim. Law and Crim. May, 1915.
- Personality.** Ein letztes Kapitel zu Recht und Persönlichkeit. *Josef Kohler.* Archiv f. Rechts- u. Wirtschaftsphil. Jan., 1915.
- Personality.** Recht und Persönlichkeit. *Franz Klein.* Archiv f. Rechts- u. Wirtschaftsphil. Jan., 1915.
- Police.** European police systems. *Raymond Fosdick.* Jour. of Crim. Law and Crim. May, 1915.
- Psychopathic Laboratory.** The psychopathic laboratory idea. *Harry Olson.* Jour. of Crim. Law and Crim. May, 1915.
- Public Defender.** Analysis of New York city and county bars reports on the public defender. *Robert Ferrari.* Jour. of Crim. Law and Crim. May, 1915.
- Religious Corporations.** Classes of American religious corporations. *Carl Zollman.* Mich. Law Rev. May, 1915.
- Roman Law.** The value and place of Roman law in the technical curriculum. *Charles Sumner Lobingier.* Am. Law Rev. May-June, 1915.
- Science of Law.** La science du droit en France au XIX^e siècle. *J. Lefort.* Rev. Gén. d. Droit, d. la Légis. et d. la Juris. Jan.-Fév., 1915.
- Social Democracy.** Eine Revision des sozialdemokratischen Programms. *Franz Oppenheimer.* Zeits. f. Pol. VIII, 1 and 2. 1915.
- Workmen's Compensation.** An English workman's remedies for injuries received in the course of his employment, at common law and by statute. *J. G. Pease.* Col. Law Rev. June, 1915.

MISCELLANEOUS

Books

- Barker, Ernest.* The submerged nationalities of the German empire. Oxford: Clarendon Press.
- Bax, Ernest Belfort.* German culture past and present. London: Allen & Unwin. Pp. 280.

- Bédier, J.* German atrocities. Paris: Armand Colin.
- Bergson, H.* La signification de la guerre. Paris: Paul Dupont. Pp. 47.
- Bernhardi, Friedrich von.* World power or downfall. London: Pearson. Pp. 128.
- Blanchon, J.* Le paiement des pensions de l'État. Nancy-Paris: Berger-Levrault. 1915. Pp. 318.
- Bosanquet, H.* The family. New York: Macmillan.
- Briggs, J. E.* History of social legislation in Iowa. Edited by *B. F. Shambaugh*. Iowa City: State Historical Society.
- Carpenter, Edward.* The healing of nations and the hidden sources of their strife. London: Allen & Unwin. Pp. 266.
- Choate, J. H., and others.* Sixty American opinions on the war. London: T. Fisher Unwin.
- Choppin, H.* Patrie et guerre. Nancy-Paris: Berger-Levrault. 1915. Pp. xxv, 215.
- Colby, F. M., and others.* New international year book. New York: Dodd, Mead.
- Coudert, F. R., and others.* Why Europe is at war. New York: Putnam.
- Crane, F.* War and world government. New York: Lane.
- Dicksee, Lawrence R.* Business methods and the war. Cambridge: Univ. Press. Pp. 80.
- Durand, E. Dana.* The trust problem. Cambridge: Harvard Univ. Press.
- Durkheim, E., and Dennis, E.* Who wanted war? Paris: Armand Colin.
- Ellwood, C. A.* The social problem. New York: Macmillan.
- Flippin, P. S.* The financial administration of the colony of Virginia. Baltimore: Johns Hopkins Univ. Press.
- Ford, H. J.* The natural history of the state. Princeton: Univ. Press.
- Gillin, J. L., and others.* Applied history. Edited by *B. F. Shambaugh*. Vol. II. Iowa City: State Historical Society.
- Gowans, Adam L.* A month's German papers. Being representative extracts from those of the memorable month of December, 1914. London: Gowans & Gray. Pp. 284.
- Grotopff, Jul.* Handbuch f. den Verwaltungsbienft. 5 gänzlich. Aufl. 2. Bd. Berlin: Lehmann. 1915. Pp. viii, 309.
- Hale, Beatrice Forbes-Robertson.* What women want. An interpretation of the feminist movement. London: A. F. Bird. Pp. 320.
- Harris, F.* England or Germany? New York: Wilmarth Press.
- Hayes, H. V.* Public utilities; their fair present value and return. New York: Van Nostrand.
- Henderson, Fred.* The new faith. A study of party politics and the war. London: Jarrold. Pp. 114.
- Hubback, J.* Russian realities. New York: Lane.
- Hurgronje, C. Snouck.* The holy war: "Modern Germany." New York: Putnams.
- Jefferson, C. E.* Christianity and international peace. New York: Crowell.
- Klein, F.* La guerre vue d'une ambulance. Paris: Armand Colin. 1915. Pp. vii, 280.
- Lestrangé, Maurice de.* La question religieuse en France pendant la guerre de 1914. Paris: Lethielleux. 1915. Pp. 159.

- Marshall, H. R.* War and the ideal of peace. New York: Duffield.
Mazim, H. Defenseless America. New York: Hearst Int. Lib. Co.
Mitchell, P. Chalmers. Evolution and the war. London: J. Murray. P. 140.
Oman, John. The war and its issue. Cambridge: Univ. Press. Pp. 138.
Priest, G. M. Germany since 1740. Boston: Ginn.
Prince, Morton. The American *versus* the German view of the war. London: Unwin. Pp. 48.
Reinach, J. La guerre de 1914. Les commentaires de Polybe. Paris: Libr. Impr. réunies. 1915. Pp. x, 374.
Roman, F. W. The industrial and commercial schools of the United States and Germany. New York: Putnam.
Russell, L. America to Japan. New York: Putnam.
Sanday, W. The meaning of the war for Germany and Great Britain. New York: Oxford Univ. Press.
Scott, H. Percy. The new slavery. London: Unwin. Pp. 190.
Shattuck, H. R. Shattuck's parliamentary answers. London: Lathrop, Lee.
Taussig, F. W. Some aspects of the tariff question. Cambridge: Harvard Univ. Press.
Tillett, Alfred W. Militancy *versus* civilization. London: P. S. King. Pp. 59.
Vergnet, Paul. France in danger. London: J. Murray. Pp. 188.
White, J. W. A textbook of the war for Americans. Philadelphia: Winston.

Articles in Periodicals

- Boundaries.** Political boundaries. *Thomas Holdich.* Nine. Cent. May, 1915.
Eugenics. Genius and eugenics. *William N. Gemmill.* Jour. of Crim. Law and Crim. May, 1915.
Europe. The United States of Europe. *George Toulmin.* Contemp. Rev. May, 1915.
Executive Council. The executive council, with special reference to Massachusetts. *A. N. Holcombe.* Am. Pol. Sci. Rev. May, 1915.
France. Die Krisis der herrschenden Partei Frankreichs. *Hubert Lagardelle.* Zeits. f. Pol. VIII, 1 and 2. 1915.
German Finances. Zur Entwicklung der Reichsfinanzen. *Mittschewsky.* Annal. d. Deutschen Reichs. No. 1. 1915.
German Propaganda. La campagne de propagande d'un ambassadeur allemand aux États-Unis (1906-1908). *B. Auerbach.* Rev. Pol. et Par. 10 Avril, 1915.
German Propaganda. The pro-German propaganda in the United States. *Edward Porritt.* Quart. Rev. April, 1915.
Germany. L'Allemagne future.—Réponse à M. Hauser. *E. Wickersheimer.* Rev. Pol. et Par. 10 Avril, 1915.
Germany. Deutschlands Ostgrenze. *Josef Partsch.* Zeits. f. Pol. VIII, 1 and 2. 1915.
Germany. Essai sur l'Allemagne future. *Henri Hauser.* Rev. Pol. et Par. 10 Mars, 1915.
Germany. Germany's resources under the blockade. *W. J. Ashley.* Atlan. Mon. June, 1915.

- Germany.** Les origines de l'Amoralité allemande. X. *Torau-Bayle*. Rev. Pol. et Par. 10 Avril, 1915.
- Illinois.** Governmental reorganization in Illinois. *John A. Fairlie*. Am. Pol. Sci. Rev. May, 1915.
- International Morality.** International morality. *David Jayne Hill*. N. Am. Rev. June, 1915.
- Iowa.** Administrative reorganization in Iowa. *F. E. Horack*. Am. Pol. Sci. Rev. May, 1915.
- Ireland.** England's irisches probleme. *Wilhelm Diebelius*. Zeits. f. Pol. VIII, 1 and 2. 1915.
- Italy.** Les socialistes Italiens et la guerre. *Ernest Lémonon*. Rev. Pol. et Par. 10 Mars, 1915.
- Kansas.** The reorganization of state government in Kansas. *C. A. Dykstra*. Am. Pol. Sci. Rev. May, 1915.
- Kant.** Kant et la guerre, à propos du manifeste des quatre-vingt-treize. *Eugène d'Eichthal*. Rev. d. Sci. Pol. 15 Avril, 1915.
- Land Registration.** Report of the committee on the Torrens system and registration of land titles, made to the conference of commissioners on uniform state laws, held at Washington in October, 1914. Am. Bar Asso'n Jour. Jan., 1915.
- Militarism.** La guerre européenne détruira-t-elle le militarisme allemand? *J. P. Paix par le Droit*. 10-25 Avril, 1915.
- Minnesota.** Administrative reorganization in Minnesota. *Jeremiah S. Young*. Am. Pol. Sci. Rev. May, 1915.
- Oregon.** Reorganization of state government in Oregon. *James D. Barnett*. Am. Pol. Sci. Rev. May, 1915.
- Political Parties.** Zur Philosophie der politischen Parteien. *Otto von der Pfordten*. Archiv f. Rechts- u. Wirtschaftsphil. Jan. and April, 1915.
- Prussia.** Die ostpreussischen Grenzlande. *Adalbert Bezzenberger*. Zeits. f. Pol. VIII, 1 and 2. 1915.
- Public Employment.** Il potere disciplinare sugli impiegati pubblici. *Edoardo Tommasone*. Riv. d. Dir. Pub. Marzo-Aprile, 1915.
- Race Development.** Standards of measurement in race development. *Howard W. Odum*. Jour. of Race Dev. April, 1915.
- Race Education.** Race Education. *J. Howard Stoutemeyer*. Jour. of Race Dev. April, 1915.
- Right to Work.** Das Arbeitsrecht. *Kurt Wolzendorff*. Annal. d. Deutschen Reichs. No. 1. 1915.
- Serbia.** The renaissance of Serbia. *A. H. E. Taylor*. British Rev. April, 1915.
- State Government.** The reorganization of state government. *Herman G. James*. Am. Pol. Sci. Rev. May, 1915.
- Turkey.** The young Turkish farce. *Khalil A. Totah*. Jour. of Race Dev. April, 1915.
- War.** Reichsbank und Krieg. *Siegfried Buff*. Annal. d. Deutschen Reichs. Nos. 2 and 3. 1915.
- War.** Les Trésoriers-payeurs généraux de la guerre. *Cyprien Girerd*. Rev. Pol. et Par. 10 Mai, 1915.

MUNICIPAL GOVERNMENT

Books

Bateson, William. Pitman's municipal office organization and management. London: I. Pitman. Pp. 504.

Klein, H. H. Bankrupting a great city. New York: Henry H. Klein.

Toulmin, H. A. Jr. The city manager. New York: Appleton.

Articles in Periodicals

Charities and Corrections. Charities and corrections. *Katherine B. Davis and John A. Kingsbury.* Proc. of Acad. of Pol. Sci. April, 1915.

City Charter. The city charter. *George McAneny.* Proc. of Acad. of Pol. Sci. April, 1915.

Education. *Thomas W. Churchill.* Proc. of Acad. of Pol. Sci. April, 1915.

Fire. Fire administration. *Robert Adamson.* Proc. of Acad. of Pol. Sci. April, 1915.

Highways. Highways, street cleaning and public works. *Douglas Mathewson.* Proc. of Acad. of Pol. Sci. April, 1915.

Mayor. The office of Mayor. *John Purroy Mitchel.* Proc. of Acad. of Pol. Sci. April, 1915.

Police. Police administration. *Arthur Woods.* Proc. of Acad. of Pol. Sci. April, 1915.

Public Health. Public health and sanitation. *S. S. Goldwater.* Proc. of Acad. of Pol. Sci. April, 1915.

Recreation. Parks and recreation. *Cabot Ward and C. Ward Crampton.* Proc. of Acad. of Pol. Sci. April, 1915.

Transportation. Transportation, port and terminal facilities. *John Purroy Mitchel.* Proc. of Acad. of Pol. Sci. April, 1915.

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JUDICIAL CONTROL OF ADMINISTRATIVE AND LEGISLATIVE ACTS IN FRANCE

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In recent years there has been an interesting and very remarkable extension of judicial control over the acts of the administrative authorities in France. The doctrine of recourse in annulment for excess of power, in particular, has undergone such an extraordinary development that it is probably safe to say that there is now no other country where private rights are better protected against arbitrary and illegal acts of public officers. It is an interesting fact also that this protection has not been created by legislation but is mainly the work of the council of state, and, to a less degree, of the court of cassation, the two supreme judicial tribunals of France.

The solicitude which the council of state, especially, has shown for the protection of individual rights and the independence which it has exhibited as over against the government by whom the councillors of state are appointed and by whom they may be removed at pleasure is a sufficient answer to the criticism of those English and American writers who assert that the French administrative courts are the docile and servile instruments of the government, and that in controversies between the administration and private individuals their decisions are generally in favor

of the administration. Scores of decisions might be cited in refutation of this view if the limits of this paper permitted. It is enough to say that few persons in France now entertain any such opinion regarding the subserviency of the council of state. On the contrary, it may be truthfully said that the council of state today enjoys a place in the public confidence, esteem and respect of the French people comparable only to that of the supreme court of the United States among Americans.¹ Thanks to its liberal jurisprudence² almost every unilateral act³ of an administrative officer or authority, from the president of the republic down to the pettiest *garde champêtre* may today be judicially attacked and annulled for illegality.

The principal forms of judicial control may be grouped under two heads: first, the indirect control exercised by the judicial courts over illegal ordinances (*rèlements*) of the administrative authorities; and, second, the direct control exercised by the council of state through its power to annul administrative acts for "excess of power," that is to say, acts which are *ultra vires*

¹ Laferrière (*Traité de la Juridiction Administrative*, 1888, vol. ii, p. 533,) justly remarks that "if any one may complain of the jurisprudence of the council of state it is not private individuals but the administration itself." If the council of state, he adds, had desired to favor the government at the expense of private individuals it could have done so by a strict interpretation of the laws of 1790 and 1872 from which its authority is derived; it could have denied recourse for excess of power for other reasons than incompetence; but it has not done this; on the contrary, it has constantly extended by interpretation the grounds of recourse to include violation of the law, vice of form and misuse of power; and, he might have added, it has constantly enlarged the number of persons to whom recourse is allowed.

² I use the word "jurisprudence" throughout this article not in the English and American sense of the word but as descriptive of the body of judicial precedent or case law.

³ For historical and juridical reasons which cannot be explained here "acts of management" (*actes de gestion*) which are largely contractual in character, are not open to recourse for excess of power. Only "acts of authority," i.e., acts of command or injunction, acts which are not assimilable to those of private individuals may be attacked and annulled for excess of power. For a discussion of the distinction and the reasons therefor, see Jèze in the *Revue du Droit Public*, vol. 22, p. 105 and vol. 25, pp. 671 ff; Hauriou, *La Gestion Administrative*, p. 33 and Marie, "de L'Avenir du Recours pour Excès de Pouvoir" in the *Rev. du Droit Public*, vol. 16, pp. 265 ff and 475 ff.

for various reasons to be described hereafter. The control exercised by the judicial courts over illegal ordinances is based on what the French call the "exception of illegality," that is, the right of the individual who is prosecuted for violation of an ordinance which he believes to be illegal to plead the fact of illegality in bar of the imposition of the penalty which the law prescribes. During the *ancien régime* and for some time after the Revolution this plea was not admitted. During the early years of the First Empire the judicial courts were, to a large degree, the servile instruments of Napoleon and refused to admit the plea of illegality against all acts of the administrative authorities.⁴

Thus in 1807 the court of cassation held that the inferior courts had no power to refuse to apply police ordinances on the ground of their illegality. For a stronger reason ordinances issued by prefects and, of course, those emanating from the emperor were exempt from judicial control.⁵ But before the fall of Napoleon the supreme court changed its attitude and in 1807 it quashed fourteen decisions of a police court at La Rochelle which had condemned certain individuals for violation of an illegal municipal ordinance. Thus the rule was laid down that the courts were not bound to impose penalties for violation of an illegal municipal regulation and in the same year the same rule in regard to ordinances emanating from prefects was affirmed. During the period of the Restoration the judges exhibited more independence because of their life tenure and in consequence of the greater prestige of the judicial tribunals as compared with the council of state, which had incurred the royal hostility largely because of its imperial origin. The judicial courts, therefore, freely asserted the right to refuse to impose fines for the violation of administrative ordinances which they regarded as illegal and the court of cassation upheld the right. During the period of the July monarchy the exception of illegality became firmly established and in some cases the courts even refused to apply

⁴ Nésard, *Le Contrôle Juridique des Règlements d'Administration Publique* p. 6.

⁵ *Ibid.*, pp. 6, 15.

illegal ordinances emanating from the king.⁶ It was during this period that the principle of the exception of illegality, which up to that time rested solely upon judicial precedent, was sanctioned by law. It is found in section 15 of article 471 of the penal code (as revised in 1832) which declares that "those found guilty of violating ordinances (*règlements*) *legally made* by the administrative authority shall be punished by a fine of from one to five francs." From that time until now the judicial tribunals have construed this provision as giving them the right to determine whether an ordinance for violation of which they are called upon to impose a fine, is within the legal competence of the authority from which it emanates and whether it is in conformity with the constitution and laws, and to refuse to impose the fine in case the contrary is found to be true.⁷ This power is therefore an exception to the general principle embodied in the law of 1790, still in force, which forbids the judges under penalty of forfeiting their offices from interfering with the exercise of the executive or legislative power, and also to article 127 of the penal code which punishes with civil degradation judges who interfere (*s'immiscer*) in matters attributed to the administration.⁸

The second means of control is the power of the council of state to annul the acts of the administrative authorities for excess of power. This is a far more important form of control than the first mentioned; it constitutes the *pièce essentielle* of

⁶ Thus in 1834 the court of Nîmes refused to apply a royal ordinance of 1822, on the ground that "it was a constitutional principle that an ordinance could not derogate from a law and that the ordinance in question was beyond the legal power of the executive as given by the chamber." The text of this decision may be found in Cahen's, *La Loi et le Règlement*, p. 376.

⁷ It is not true as is sometimes claimed, however, that article 471, section 15 mentioned above has reference only to police ordinances. It applies to all ordinances and the power to refuse to apply those which are illegal belongs to all judges, correctional, civil and commercial. Compare Garraud, *Traité de Droit Pénal*, 2d ed., vol. i, p. 225 and Nézard, *Le Contrôle Juridictionnel*, p. 72.

⁸ Laferrière, *Traité de la Juridiction Administrative*, vol. ii, p. 435 explains the right of the judges to refuse to apply *règlements* illegally made, as a right inherent in the power of the courts to administer criminal justice. For the same view see Garraud, *Droit Pénal*, vol. vi, p. 444. Hauriou (*Précis de Droit Administratif et de Droit Public*, 8th ed., p. 60), points out that this power serves as a "corrective" of French administrative law because the administration is here made accountable to the judicial rather than to the administrative courts.

French administrative law.⁹ It rests almost entirely upon the jurisprudence of the council of state (and to a limited extent upon that of the tribunal of conflicts). The legislature could, of course, have intervened and freed the administration from the control to which the council of state by its decisions has subjected it, but it has not done so; on the contrary, it has acquiesced in the continued extension of this control and in various legislative acts it has been sanctioned by allusion. From the standpoint of the individual it possesses certain advantages over the control exercised by the judicial courts through the "exception of illegality"¹⁰ since he is not compelled to violate the act and submit to a prosecution in order to bring the question of its illegality before the court. Moreover, other persons than those directly injured by the act may attack it before the council of state. Finally, if the objectionable act is annulled by the council of state, the effect operates *erga omnes*, that is to say, all persons concerned benefit from the annulment, whereas the judicial court does not annul the act but simply refuses to impose the fine prescribed for its violation.

The power of the council of state in an action of annulment for excess of power is strictly limited, however, to pronouncing the nullity of the act and it can do this only for excess of power. It cannot annul for expediency or other reasons; it cannot in a proceeding for annulment consider questions of fact;¹¹ nor mod-

⁹ Jèze, *Principes Généraux du Droit Administratif*, p. 89; compare also Hauriou, pp. 434 et seq.

¹⁰ On the whole question of the power of the judicial courts in respect to illegal ordinances see Nézard, *Le Contrôle Juridictionnel des Règlements d'Administration Publique* (1910), pp. 6-7; 15-16; Cahen, *La Loi et le Règlement*, p. 376; Moreau, *Le Règlement administratif*, p. 281; Laferrière, *Op. cit.*, bk. vi; Hauriou, p. 60; Duquesnel, *Le Jurisprudence comparée du Conseil d'Etat et de la Cour. de Cassation*, pp. 9 ff. and 137 ff.

¹¹ M. Jèze, however, holds the contrary view and he quotes the opinion of M. Romieu, a distinguished member of the council of state, in the *Durand* case (1906) in favor of the view that in certain cases the council of state may pass upon questions of fact in proceedings for annulment. See his note in the *Revue du Droit Public*, vol. 28, p. 290. It would be a great advantage to suitors if when the council of state annuls an ordinance it could by the same decision award damages or furnish other redress without requiring the petitioner to bring a new action in the form of *recours contentieux*. M. Jèze advocates this change, *Principes Généraux*, p. 96.

ify or reform the act complained of, nor decree restitution, nor condemn the administration to pecuniary damages or otherwise redress the injuries which the individual may have sustained.¹²

Recourse in annulment for excess of power is an extraordinary remedy and ordinarily it is not open to the individual until he has exhausted every other remedy before the administrative and judicial courts. This is the theory of "parallel recourse" developed by the council of state for the purpose of preventing it from being swamped by a multiplicity of vexatious and unfounded actions and at the same time to avoid the appearance of usurping the jurisdiction of other courts. Thus a taxpayer can not by this procedure attack the act of a municipal council levying a communal tax, because the law has provided another remedy, namely recourse before the judicial tribunals. The general rule is that if the individual may get satisfaction through any other tribunal or even through an ordinary action before the council of state, this tribunal will not permit him to attack the act by a proceeding in annulment for excess of power.¹³

A very interesting evolution of the jurisprudence of the council of state has been the gradual relaxation of the old requirements in regard to the interest required of the individual to be

¹² This can be done by the council of state only by another proceeding known as ordinary contentious recourse or *recours contentieux de pleine juridiction*, as it is sometimes called. The council of state will refuse to entertain an action in annulment for excess of power when the result will have the direct effect of condemning the administration to indemnify the injured party or to compel it to do something in his behalf. Ordinarily it will say in substance to him "the purpose of recourse in annulment for excess of power is only to secure the nullification of the act; if you desire an indemnity or other reparation for wrongs suffered, another remedy is open to you, namely, the ordinary *recours contentieux* and you must use it." But the rigor of this doctrine affirmed as recently as 1911 in the *Desplogues* case seems to have been relaxed if not abandoned in 1912 in the *Lafage* case where the council of state admitted an action in annulment against the decision of a minister refusing an allocation to a military surgeon. It annulled the decision of the minister thereby indirectly condemning the state to allow the indemnity claimed. See note by M. Jèze in the *Revue du Droit Public*, vol. 29, pp. 266.

¹³ Compare Laferrière, vol. ii, pp. 444 et seq., see also an article by Marie, "L'Avenir du Recours pour Excès de Pouvoir," in the *Revue du Droit Public*, vol. 14, pp. 27 ff.

admitted to attack judicially administrative acts for excess of power. Originally, it was necessary that he be able to show that the act complained of had violated a legal right but this rule has been abandoned and it is now sufficient for him to show that he possesses merely an interest in having the act annulled and this interest need not be direct and material but simply moral, that is to say, the interest which any citizen would have in seeing the act nullified.¹⁴ Thus it has been held that an innkeeper whose inn fronts on a public square has sufficient interest to attack the order of a mayor forbidding the holding of a public fair on the square. Although the order injures no legal right of his he is interested in having the fair continued because of the increased business it brings to him by reason of the crowds it attracts to the vicinity of his hotel. He may, therefore, attack the act before the council of state and have it annulled in case it is *ultra vires*.¹⁵ So an association of functionaries may attack an appointment, promotion, or dismissal of a public officer if the act is in violation of the ministerial ordinance governing appointments and removals and if the effect is to prejudice the promotion of any functionary belonging to the association. Any taxpayer may likewise attack an appropriation of money by a municipal council, or any other municipal act the effect of which is to increase his taxes, or to waste the funds or other property of the municipality. So any property owner has sufficient interest to enable him to attack a prefectural order allowing an electric tramway company to stretch overhead wires on the public streets.¹⁶

The result of the relaxation by the council of state of the rigor of the old rule regarding the degree of interest required is, that today almost any citizen may knock at its doors and obtain the

¹⁴ But it should be observed that it is not to satisfy his interest that recourse in annulation is allowed; it is to force the administration to observe and respect the law. Cf Berthélemy, *Droit Administratif*, 6th ed., p. 930.

¹⁵ In order to avail of the *recours contentieux*, with a view to obtaining reparation for injuries he must, however, be able to show the violation of a right; mere interest is not sufficient as it is in the case of recourse in annulment.

¹⁶ See the *Storch* case, 1905, analyzed by M. Jèze in the *Revue du Droit Public*, vol. 22, pp. 346 et seq.

annulment of an illegal administrative act.¹⁷ The extent to which this privilege is availed of in practice is apparent from the crowded dockets of the council of state and the large number of decisions which it renders. The proceeding in annulment is simple, expeditious and inexpensive. The complaint is required to be filed on stamped paper (the cost of the stamp is 12 cents); there is now no *enregistrement* tax (unless the petitioner loses his suit in which case he is assessed \$20 in costs), and since 1864 the services of an attorney have not been obligatory. With an expenditure of only twelve sous, therefore, the citizen may take his case to the supreme administrative court and have an illegal act of the administration declared null and void.

The grounds upon which the acts of the administrative authorities may be annulled, like the number of persons allowed to bring actions in recourse for excess of power, have been gradually multiplied as the council of state has become more and more inspired with liberal democratic ideas. Originally, annulment was pronounced only for incompetence and vice of form on the part of the author of the act attacked; then during the period of the July monarchy violation of the law was admitted as a ground for annulment, and, finally, after 1872, misuse or abuse of power (*détournement de pouvoir*) was recognized to be a sufficient ground for nullification. Most of the writers on administrative law today enumerate these as the only grounds upon which the council of state will nullify the acts of the administrative authorities.¹⁸

¹⁷ The jurisprudence relating to the extension of the doctrine of interest is of very recent origin. In fact it first appeared in the *Casonova* case (1901) where a taxpayer was admitted to attack an ordinance of a municipal council appropriating 2000 francs for the support of a town physician. Since that date there has been an almost steady stream of decisions extending the right of recourse to new categories of persons. For a review of the more recent decisions see M. Jèze's note in the *Revue du Droit Public*, vol. 22, pp. 346 et seq; vol. 23, pp. 254 et seq., also his *Principes Généraux du Droit Administratif*, pp. 217 ff. Compare also Laferrière, vol. ii, p. 409; Hanriou, p. 464; Berthélemy, *Droit Administratif*, p. 931 and Moreau, *Le Règlement Administratif*, p. 300.

¹⁸ Compare Hauriou, p. 437 and Laferrière, vol. ii, pp. 468 ff. M. Jèze criticizes this classification as unscientific and inaccurate. Thus incompetence and violation of the law overlap and there are other grounds of recourse, he says, than those mentioned above. See his notes in the *Revue du Droit Public*, vol. 25, p. 682 and vol. 28, pp. 286 ff.

Incompetence may be due to usurpation; for example, a mayor issues an ordinance which only a prefect is competent to issue, or it may result from encroachment upon private interests, as where a municipal council establishes a system of municipal ownership or supports a town physician.¹⁹ Vice of form results from the failure of the officer to observe the formalities required by the law, as where he fails to give the notice prescribed or where an "ordinance of public administration" issued by the president, fails to contain the visa, *le conseil d'état entendu*. Violation of the law results where the act is in contravention of the letter of the constitution, the statutes or the ordinances in force.²⁰ Misuse of power (*détournement du pouvoir*), which represents the latest development of the jurisprudence of recourse, consists in the violation of the spirit of the law, that is to say, the exercise of power for another purpose than that which the law has conferred it. The reports of the council of state are full of cases of this kind. Prefects and mayors, who have a large police power, frequently issue *règlements* ostensibly in the interest of the public

¹⁹ Hauriou, p. 456. Even the refusal of an officer to act when the law requires him to do so (e.g., where a mayor required to deliver a property alignment or a subprefect declines to issue a hunting permit, when the applicant is entitled to it) is construed as an act tainted with incompetence and its nullity will be pronounced.

²⁰ It is important to emphasize the fact here that the council of state annuls the acts of administrative authorities in violation of their own ordinances as readily as it annuls acts in violation of the statutes. A minister is, of course, free at any time to modify or revoke an ordinance but so long as it remains in force the council of state will insist that it be strictly observed. Thus acts appointing, promoting or removing public officers in violation of the ordinances relating to the civil service (and in France almost the whole law governing such matters is regulated by ministerial ordinances rather than by acts of the legislature), may be nullified and in fact are frequently nullified, by the council of state. The protection against favoritism and other forms of arbitrary action on the part of ministers which the council of state has thus created has gone far toward securing for the functionaries those guarantees which they have long demanded but which the legislature has refused to give them. The solicitude of the council of state for their rights and the frequency with which it has annulled arbitrary appointments, promotions and removals has done much to increase the respect and esteem in which it is held not only by the great body of functionaries but by the masses of the French people.

For a review of some recent important decisions on these points see M. Jèze in the *Revue du Droit Public*, vol. 23, pp. 285 ff.

health or safety when the real purpose is the financial interest of the commune, or some private or political interest.²¹ It is now well settled, however, that the acts of administrative authorities to be legal must not only be in conformity with the letter of the law but must be in harmony with its spirit and purpose.

A classic case of the kind, the first in which the doctrine of *détournement de pouvoir* was enunciated, arose in 1864 when the prefect of the department of the Marne-et-Seine, under the pretext of his police power, granted to the owner of an omnibus line the exclusive privilege of meeting the trains at the railroad station at Fontainebleau. The council of state declared the act null and void on the ground that it was not a police measure but one the effect of which was to establish a private monopoly and as such was a misuse of power. Another famous case arose in 1872 involving the legality of a prefectoral ordinance forbidding the owner of a mineral spring from selling the waters therefrom. The ordinance was issued as a health measure but in fact the hygienic properties of the water had been established by chemical analysis. The council of state held that the ordinance was issued with another end in view than that which the law contemplated and was therefore null and void.²²

A still more famous case arose in 1879. The state had established a government monopoly of the manufacture of matches and in order to avoid the expense of expropriating unauthorized private manufacturers, a prefect acting under the order of the minister of the interior proceeded to close their establishments upon police grounds. The council of state not only pronounced the order null and void but condemned the state to pay damages to the private manufacturers. In this connection it may be interesting to observe that the private manufacturers had sought relief in the judicial courts but the court of cassation sustained the legality of the ministerial order. Thereupon they attacked the order before the council of state by an action in annulment for excess of power and that body sustained their contention. We have here one of many cases in which private rights have

²¹ Compare Laferrière, vol. ii, pp. 453 ff and 521 ff.

²² Laferrière, vol. ii, p. 531.

found a guardian in the supreme administrative court when the supreme judicial court had upheld the claims of the government.

As has been said, the judicial courts during the period of the Restoration asserted and exercised the right to refuse to impose fines for the violation of all illegal ordinances, even those issued by the crown. But the administrative courts, in the beginning, declined to follow the example of the judicial tribunals, and, while they did not hesitate to allow recourse for excess of power against the ordinances issued by mayors and prefects they refused to allow it against those emanating from the king. The council of state, as has been pointed out, was in bad repute because of its imperial origin and subserviency to the emperor and several attempts were even made to abolish it. The government of the restoration would in all probability have refused to tolerate the exercise of control over royal ordinances although it acquiesced in the exercise of such control by the judicial courts, and it did not interpose objection to annulment by the council of state of illegal ordinances of other administrative authorities than the king.²² With the advent of the July monarchy, however, and the loss by the crown of its preponderant political rôle, a new theory regarding the immunity of the royal acts from judicial control was developed and in 1845 the council of state asserted and exercised, for the first time, the right to entertain jurisdiction of actions for the annulment of certain ordinances emanating from the king, for reasons of incompetence and vice of form, but not yet for violation of law or misuse of power. At that time and until very recently, however, the council of state made a distinction between simple ordinances emanating from the chief of state, and "ordinances of public administration" (*règlements d'administration publique*) the latter of which, but not the former, were required to be submitted to the council of state for its advice. Against the former class of ordinances the council of state admitted recourse for excess of power but it was

²² Compare Nézard, *Le Contrôle Juridictionnel*, p. 17; Jèze, *Principes Généraux du Droit Administratif*, p. 217; Moreau, *Le Règlement Administratif*, p. 284; and Cormenin, *Questions du Droit Administratif*, p. 64.

refused against the latter.²⁴ It has long been a practice of the French parliament to delegate very extensive legislative power to the chief of state. It frequently authorizes him to regulate by decree important matters which in the United States belong entirely to the domain of statutory legislation. It is also a common French practice to embody in the acts of parliament only general principles and to delegate to the executive the power to complete the details of the statute by an "ordinance of public administration."²⁵ The council of state has always regarded such ordinances as a form of delegated legislation and therefore assimilable to acts of parliament. As such they were until very recently held to be exempt from judicial control through actions in annulment for excess of power, exactly as if they were enacted directly by the legislature. If illegal, the judicial courts might refuse to impose fines for their violation but neither they nor the council of state could annul them. As late as 1895 in the *Montreuil* case the council of state refused to entertain jurisdiction of an action in annulment brought by a commune against a decree fixing an indemnity of residence allowed by law to teachers of primary schools, on the ground that

²⁴ Most of the French jurists recognize two forms of *règlements* of public administration: first, those issued by the chief of state as a result of his constitutional power to oversee and assure the execution of the laws; second, those issued by him in pursuance of delegation by the legislature, as where he is charged by the legislature with regulating by decree some matter with which the law does not deal or where it charges him with completing the details of a law. Both types of *règlements*, however, are required to be submitted to the council of state.

²⁵ There has been much discussion in France as to whether such ordinances are the result of legislative delegation. The theory of delegation was sustained by most of the older writers like Rossi, Foucart, Aucoc, St. Girons, DuCrocq and Batbie. Most of the present day authorities, however, maintain the contrary view and hold to the principle that legislative power cannot be delegated. Such is the view of Esmein ("de la delegation du Pouvoir Legislatif," *Rev. Pol. et Parl.*, vol. i, p. 209); Berthélemy, *Droit Administratif*, p. 90; Jèze, *Principes Généraux*, p. 221; Nézard, *Op. cit.*, p. 33; and Hanriou, *Droit administratif*, p. 150. Among contemporary authorities, however, who maintain the theory of delegation are Moreau, (*Le Règlement Administratif*, p. 180) and Cahen (*La Loi et le Règlement*, pp. 232 ff.

The decision of the council of state in 1907 admitting recourse for excess of power against this class of ordinances leaves the question one of academic interest only.

the decree was issued by the executive in pursuance of authority delegated by the legislature. But already there were signs of a tendency toward a relaxation of this rule. The council of state had in 1888 asserted the right to determine whether such an ordinance, in a particular case, was regular in form; then it went a step further and asserted the right to determine whether it was regular in substance (*au fond*), that is to say, whether the president in issuing the ordinance had acted within his legal competence.²⁶ It may also be remarked that the council of state had all along allowed recourse against ordinances issued by mayors in pursuance of authority delegated by parliament. Moreover, the council of state had attenuated the rigor of the old rule by allowing recourse against specific acts in execution of such ordinances. This solution of the problem was quite illogical and was criticized by many of the highest authorities.²⁷ Why, it was asked, should the council of state refuse to admit an ordinance to be judicially attacked for excess of power when the individual measures by which the ordinance was executed were open to attack and annulment? Finally, in 1907 the council of state seized a favorable occasion to adopt the solution which the best juristic thought of France had long demanded and toward which its own decisions had been tending for some years. In 1901 the president had issued an ordinance of public administration in pursuance of an act of parliament of 1842, under which the state had entered into certain agreements with the railroad companies. The ordinance of 1901 undertook to modify the terms of these agreements by imposing upon the companies new and heavy burdens in respect to the maintenance and operation of their lines. The companies attacked the ordinance on the ground of excess of power. The minister of public works

²⁶ Jèze, *Revue du Droit Public*, vol. 25, p. 42. The court of accounts (1897) and the court of cassation (1900, 1905) asserted and exercised a similar control. The latter court held invalid a decree of the President issued in pursuance of a law of June 26, 1899, on the ground that he had "manifestly exceeded the powers which the said law delegated to the executive power—and thus encroached upon the domain reserved to the legislative power." See also the note by M. Jèze in the *Rev. du Dr. Pub.*, vol. 23, p. 74.

²⁷ See Nézard, p. 21 and the authorities cited.

appeared before the council and set up the old plea that ordinances emanating from the chief of state could not be made objects of recourse in annulment for excess of power. The council of state, however, entertained jurisdiction of the case and declared the ordinance null and void as being in excess of power. Thus the old distinction between simple presidential ordinances and ordinances of public administration was abandoned and the immunity from judicial control which the latter had always enjoyed was definitely abandoned after having been maintained for nearly a century.²⁸ The theory of legislative delegation which the council of state has always maintained was not, however, repudiated. It still holds that such ordinances are the result of delegation by the legislature, but henceforth they are not to be regarded as fully assimilable to statutes and like other ordinances they may be attacked and annulled for excess of power.²⁹

This decision constitutes a notable landmark in a long and interesting evolution of the jurisprudence of the council of state in regard to recourse for excess of power. It marks a complete reversal of a line of decisions dating back almost to the origin of the theory of the doctrine of recourse and can only be explained by the increasing liberalism of the council of state and its desire to enlarge still further the protection of private rights against arbitrary and illegal acts of the executive. It was also another interesting exhibition of the independence of the council of state as over against the government. The case was one in which the government was vitally interested and it made a strong effort to induce the council of state to stand by its former decisions and refuse recourse against ordinances of public administration. The far-reaching effect of the decision can only be fully appreciated when we remember that a very considerable and important part of French legislation today is being enacted not by the legislature but by the president in the form of ordinances of public administration, issued in pursuance of legislative delegation. In

²⁸ This new theory has since been many times affirmed. See the cases cited by Jèze, *Principes Généraux*, p. 222, n. 2.

²⁹ For a discussion of this now famous case see Jèze in the *Revue du Droit Public*, vol. 25, pp. 51 ff and Nézard, *Le Contrôle Juridictionnel*, pp. 22 ff.

recent years there has been an increasing tendency on the part of the legislature to abdicate its functions and to delegate its powers of legislation to the executive. Almost every important act of parliament today concludes with the familiar clause: "an ordinance of public administration shall determine the measures proper for assuring the execution of the present law."³⁰ In many cases these ordinances contain important general provisions imposing obligations upon the citizens as well as provisions affecting their rights of person and property.³¹ In short, they are intrinsically if not in form veritable legislative acts and there have been many complaints that these ordinances in effect often modified if they did not violate the statutes in pursuance of which they were issued. So long as the council of state refused to allow recourse against them there was no way by which they could be attacked and nullified, and the individuals affected were without redress except that they could attack individually the specific measures in execution of the ordinance. In that case the council of state could annul the measure of execution but not the ordinance itself. It remained in effect and its enforcement could only be prevented by separate and distinct suits brought by each individual affected, against the particular act of execution.

While the council of state by its decision of 1907 abandoned the old distinction between simple presidential ordinances and ordinances of public administration and declared that the latter equally with the former were judicially attackable for excess of power there still remain two classes of presidential acts against

³⁰ Compare Nézard, *Op. cit.*, p. 23. The following recent examples may be cited in illustration; the law of 1894 concerning cheap tenement houses was completed by an ordinance of public administration of September 21, 1895; the law on associations of 1901 was completed by two ordinances issued in August of the same year; the law of 1904 concerning congregations was completed by two ordinances issued in January and June, 1905; the great law of 1905 on the separation of church and state was completed by the promulgation of three different ordinances. Many others might be cited.

³¹ See the examples cited in Nézard, pp. 27-31. Duguit (*Droit Const.*, i, p. 195, holds that all *règlements* entail restrictions upon the rights of individuals in respect to their liberty or property and are therefore in effect material, if not formal laws.

which the council of state refuses to allow recourse in annulment for excess of power. The first of these are the decrees, or decree-laws, as they are sometimes called, issued in pursuance of the *senatus consultum* of 1854,³² which authorizes the president to regulate by decree colonial matters³³ in so far as they have not been regulated by acts of parliament. The law of 1872 which defines in general terms the jurisdiction of the council of state restricts its competence in respect to recourse for excess of power to acts of the "different administrative authorities." Now the council of state has uniformly held that the president when exercising the power of legislation in respect to the colonies acts not as an "administrative authority" but as a "political authority" and consequently his colonial decrees are not subject to attack for excess of power.³⁴ But having decided in 1907 that ordinances of public administration, which differ in no intrinsic respect from decrees for the government of the colonies (both being the result of legislative delegation) are the acts of the president as an "administrative authority," logic and consistency would seem to require that the council of state should now open its doors to recourse in annulment against colonial decrees, and it is predicted that this will shortly be done.³⁵

The second class of acts emanating from the president, against which the council of state declines to admit recourse in annulment for excess of power, are the so-called *actes de gouvernement*. For a long time the administrative jurists of France have recognized a distinction between "administrative" acts and "political" or "governmental" acts; the council of state has approved the distinction and has refused to allow individuals to attack ju-

³² This *senatus-consultus* of course lost its constitutional character with the downfall of the Second Empire but it still remains in force as a statute.

³³ Except in Martinique, Guadeloupe and Réunion.

³⁴ Compare Tessier, *de la Responsabilité de la Puissance Publique*, p. 18.

³⁵ Such is the view of Jèze, *Principes Généraux*, p. 216 and Nésard, *Le Contrôle juridictionnel*, p. 58. Even Laferrière, writing years before the decision of 1907, admitted that if the President should undertake to deal by decree with colonial matters, the regulation of which is reserved to Parliament, the council of state would be justified in treating such a decree as of no force (*Traité*, vol. ii, pp. 8, 9). Compare also Tessier, p. 18.

dicially the latter class of acts for excess of power, because in the performance of such acts the president is not acting as an "administrative" authority. The theory of *actes de gouvernement* has occupied an important place in French administrative law and there is an extensive literature, mostly polemic, dealing with the subject, although the matter is now becoming less and less important because of the increasing disposition of the council of state to abandon the distinction between the two categories of acts. The controversy has raged not so much around the theory upon which the distinction is based as around the question as to where the line of demarcation between the two classes of acts shall be drawn. A present day writer of high standing thus distinguishes between the two: "To govern, is to oversee the functioning of the public authorities, to assure the execution of the laws, to carry on relations with foreign powers; to administer, is to assure the daily application of the laws and to watch over the relations of the citizens with the public authorities and the relations between the different administrative authorities."³⁶ Some of the older writers constructed their definitions of *actes de gouvernement* so broadly as practically to deprive the government of all judicial control. Thus Dufour³⁷ defined an "act of government" as one which "has for its purpose the defense of society against its enemies from within and without" and this view was held by the court of cassation in a number of cases during the periods of the Restoration, the July monarchy and the second empire. Vivien in 1849 stated the generally accepted theory when he declared that "in certain circumstances the measures taken by the government in view of a great public necessity, even though they violate private rights are withdrawn from the control of the courts, otherwise the action of the government would be paralyzed, to the great detriment of the public interest." As has been pointed out by a well known French jurist, there is no abuse of authority which could

³⁶ Tessier, *Op. cit.*, p. 42. Laferrière, vol. ii, p. 31 and Aucoc, *Conférences*, vol. i, secs. 38, 39, make a somewhat similar distinction.

³⁷ *Droit Administratif*, vol. iv, p. 600.

not be justified upon such a theory.³⁸ Other writers have included within the category of governmental acts, measures of protection against invasion, epidemics, floods, riots, insurrections, etc.³⁹ The whole theory is an arbitrary one; it is hardly consistent with the liberal and enlightened jurisprudence of the council of state and is condemned by some of the most distinguished jurists of France.⁴⁰

There are certain acts of the president, however, which even those who condemn the theory admit to be beyond the control

³⁸ Brémont, "Des Actes de Gouvernement," in the *Revue du Droit Pubic*, vol. v, pp. 23-75. This article contains a very full and learned discussion of the whole subject. See also Courtois, *Théorie des Actes de Gouvernement* (1899). There is a valuable bibliography of the subject in Moreau, p. 77.

³⁹ See Laferrière, vol. ii, p. 39; Aucoc, vol. i, sec. 289; and Du Crocq, vol. i, sec. 64. Laferrière mentions also, "measures of sanitary police" (p. 41).

⁴⁰ For example by M. Jèze, *Principes Généraux*, p. 232; Berthélemy, *Droit Administratif*, 7th ed., pp. 101, 105; Brémont, article cited p. 23; Michoud, *Annales de l'Enseignement Supérieur de Grenoble*, vol. i, p. 82; Hauriou, *Droit administratif*, pp. 77 ff. Professor Jèze remarks that the distinction between "governmental" and "administrative" acts is most regrettable and is contrary to the spirit of modern French positive law. "There should be no acts of government which are free from judicial control and against which no recourse is allowed when they are illegal. It places the government above the laws upon the pretext that it acts are political." Some writers apparently frightened at the possible consequences of the doctrine in the vague and arbitrary form in which they have stated it, have attempted to attenuate its rigor by laying down the rule that, while the courts may not annul such acts they may decline to apply them when illegal. Thus Dareste, *Justice Administrative*, p. 222 and Aucoc, *Conférences*, vol. i, sec. 289.

Laferrière (ii, 40) recognizes that while general measures of the government for the protection of the public safety are not attackable for excess of power the individual acts in execution of those measures are. Thus a declaration of a state of siege cannot be made the object of recourse for excess of power but the act of the military commander who orders the imprisonment of an individual or the seizure of his property in pursuance of the decree may be. If this is true, what does the distinction avail the government? What is gained by exempting a decree of siege from judicial interference if the acts by which the decree are carried into execution are attackable? The theory of Laferrière, however, is followed by the council of state and the tribunal of conflicts. They refuse to recognize the right of recourse against decrees proclaiming a state of siege but they allow actions for damages sustained on account of individual acts in execution of the decrees. Thus the council of state has allowed recourse against any act suppressing a newspaper in execution of a declaration of siege although it refused to allow the declaration itself to be attacked. Compare Brémont, *Op. cit.*, p. 64.

of the courts. Such are the acts performed by him in the exercise of his constitutional powers in relation to the legislature; the convocation of the electors, the fixing of the date of the elections; the summoning, adjourning and closing of the sessions of parliament, the dissolution of the chamber of deputies, etc. Exempt likewise are his acts in respect to the conduct of foreign relations, such as the conclusion and execution of treaties. There are, however, signs of a disposition to admit recourse against illegal acts of diplomatic and consular representatives. Thus it has recently been held that an act performed by a diplomatic agent is not necessarily diplomatic and therefore immune from judicial attack since the act may be performed by him in his capacity as a judge, an arbiter, notary or officer of the civil state, as for example, when he performs a marriage ceremony.⁴¹ The danger to which the citizen is exposed from the illegal acts of the government in respect to international relations is not great but as regards acts in the alleged interest of the public safety the possibility of abuse is very considerable. Happily the number of "governmental" acts of this kind against which recourse is refused as has been greatly reduced by the decisions of the council of state, and the tribunal of conflicts. But formerly the number was very large and both the administrative and judicial courts exhibited a deplorable subserviency toward the government. This was especially true during the period of

⁴¹ Jèze, *Principes Généraux*, p. 236. A recent interesting case of the kind arose from the refusal of the French minister to Hayti to celebrate a marriage between two French subjects residing in that country, although there were no legal impediments to their marrying and there was no question as to the legal right of the minister to perform the ceremony. The parties thereupon returned to France and were married. The husband then brought an action for damages against the minister before the civil tribunal at Paris. The minister of foreign affairs induced the prefect to raise the question of conflict but the tribunal of conflicts affirmed the jurisdiction of the civil tribunal and ruled that all acts performed by a diplomatic representative in his character as an officer of the civil state were subject to judicial control. See the interesting comment on this case by M. Jèze in the *Revue du Droit Public*, vol. 28 (1911), pp. 666 ff. But compare the cases of *Bachatori*, *Vaudelet*, *Rasat*, and *Faraut* in which the council of state held that certain acts of a purely diplomatic character were exempt from judicial control. This doctrine is criticised by Jèze (in the *Rev. du Droit Pub.*, vol. 21, p. 83).

the second empire when the independence of the council of state was far less than now. Thus in 1857 it refused to allow recourse against an imperial decree of 1854 forbidding the distillation of cereals—a measure designed to meet a threatened famine. The council of state rejected the petition on the ground that the decree was “a measure of government taken in the general interest and public safety.”⁴² So with regard to measures adopted by the government against members of dethroned dynasties, the council of state refused to interfere. Thus a decree of 1852 confiscating certain lands given by Louis Philippe in 1830 to his children was held to be a political or governmental act which the council of state would not permit to be attacked for excess of power. Likewise, a decree of the minister of the interior ordering the seizure of the manuscript of a *History of the Princes of Conde*, then in the possession of the Duc d’Aumale was held by the council of state in 1867 to be a political act and therefore not a subject for recourse in annulment.⁴³

But since the establishment of the third republic the council of state and the tribunal of conflicts have shown more independence and they have not hesitated to allow recourse for excess of power against many acts which had formerly escaped judicial control because of their so-called “governmental” or “political” character. Thus in 1875 the council of state took jurisdiction of an action in annulment for excess of power brought by Jerome Napoleon whose name had been stricken from the army registers by order of the minister of war. It did likewise in 1887 in the cases of the Princes of Orleans and Prince Murat who had been similarly treated, and jurisdiction was taken notwithstanding the fact that the action of the government had been approved

⁴² Brémond, *Op. cit.*, pp. 63–64.

⁴³ *Ibid.*, p. 65. Laferrière, (ii, 37) admits that “this jurisprudence went too far” in attaching too much importance to the intentions of the government and to *politiques mobiles*. Until the downfall of the Second Empire the so-called *mobile* theory was applied by the courts in dealing with these cases, that is to say, the test of whether an act was “governmental” was made to depend upon the circumstances of the moment and the motives of the government rather than upon the nature of the act. See the comments of Hauriou, p. 78; Laferrière, vol. ii, p. 31, and Berthélemy, p. 99.

by an order of the day adopted by parliament. The order of the minister in respect to Prince Murat was annulled for false application of the law.⁴⁴ In 1880 the tribunal of conflicts held that the decrees of the government directed against the religious congregations were not "acts of government" but administrative acts and this also, notwithstanding the fact that they had been approved by parliament. Again in 1889 the tribunal of conflicts rejected the plea of "governmental acts" in the case of the seizure by a prefect under the order of the minister of the interior of the papers of the Count of Paris. Finally, in 1902 the tribunal of conflicts repudiated once more the old theory of "acts of high police or acts of government."⁴⁵ So with regard to the expulsion of foreigners the council of state holds that such acts are not political in the sense that they are exempt from judicial attack for illegality.

Thus, thanks to the liberal jurisprudence of the council of state, the old theory of the immunity of "governmental" acts has nearly disappeared. Individual liberty is hardly exposed to serious danger from the little that remains of it. The plea of public safety in defense of acts in violation of the law and of private rights is no longer entertained either by the council of state or the court of cassation. The few acts which remain free from judicial control relate for the most part to international relations and the maintenance of a state of martial law, and even as to these the discretion of the government is now considerably limited.

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Such is the control exercised today by the administrative and judicial courts over the acts of the administrative authorities. When we turn to acts of the legislature we find an almost entire absence of both executive and judicial control.

A distinguished French writer thus describes the legal omnipotence of parliament: "The powers of parliament in our public law, being without limits, the laws which it enacts are not sus-

⁴⁴ Laferrière, vol. ii, p. 38.

⁴⁵ This was the case of the prefect of the Rhone against the *Société Immobilière de St. Just*. See the note by Jèze in the *Revue du Droit Public*, 1911, p. 63.

ceptible, when they have been regularly promulgated, of any sort of recourse, even for violation of law."⁴⁶ This is the view of the great majority of French jurists.⁴⁷ Every act of parliament duly promulgated must therefore be applied by the courts whatever may be their opinion regarding its unconstitutionality.⁴⁸

The question of unconstitutionality was raised for the first time during the July monarchy. In October, 1830, parliament passed a press law which was clearly contrary to article 69 of the charter. M. Cremieux, an eminent jurist, made a strong plea before the court of cassation in which he affirmed the right of the court to refuse to apply the law because of its manifest unconstitutionality and he pointed out that if the legislature could modify or abrogate with impunity any provision of the constitution it followed that there could be no constitution in the true sense of the word.⁴⁹ But after ten hours' deliberation the court of cassation decided that it had no power to declare the law unconstitutional; on the contrary the courts were bound to apply every law duly enacted by the chambers and regularly promulgated by the chief of state. In the following year this opinion was reaffirmed by the court of cassation, and again in 1851, and this view has been followed without exception since

⁴⁶ Tessier, *De la Responsabilité de la Puissance Publique*, p. 15.

⁴⁷ Compare especially Esmein, *Droit Constitutionnel*, pp. 475, 501; Larnaude, *Bulletin de la Société de Législation Comparée*, 1902, p. 220; Nézard, *Théorie Juridique de la Puissance Publique*, p. 17; Laferrière, *Traité*, vol. i, p. 435; Duguit, *Droit Constitutionnel*, vol. i, pp. 158-159. "The Parliament," says Moreau (*La Règlement Administratif*, p. 293), "because it is elected by the nation is subject to no control other than that of the electors and of public opinion; its acts cannot be referred to a tribunal of any kind whatever; rightly or wrongly, it is believed in France at present that this is the price of its independence and that its independence is necessary to liberty and the public welfare."

⁴⁸ It may also be added that there is no indirect judicial control in the form of actions for damages on account of the unconstitutional exercise of legislative power. See Laferrière, vol. ii, p. 13. But Duguit (*Transformations du Droit Public*, pp. 85, 241) thinks there are signs of a tendency to recognize the responsibility of the State for injuries resulting from the operation of unconstitutional laws.

⁴⁹ The case is reported in Sirey's *Recueil* 33, 1, 357 (1833). See also the comments of M. Jèze in an article entitled, "Le Contrôle des Délibérations des assemblées Délibérantes," in the *Revue Générale de l'Administration*, 1895, p. 411.

the establishment of the third republic.⁵⁰ The constitution of 1875 imposes few or no direct limitations on the legislative power and it contains no specific enumeration of the subjects upon which parliament may legislate. Its omnipotence is even more complete than that of the English parliament, for the French legislature is not limited by a body of custom and tradition such as operates in fact to restrict the legislative power in England. Unlike most of the earlier written constitutions of France, the constitution of 1875 contains no declaration of rights and of guarantees of individual liberty such as operate to limit the legislative power in the United States. It is true that some French writers affirm that the fundamental principles embodied in the earlier declarations are in fact a part of the public law of France today and as such are binding upon parliament quite as much as if they had been expressly reaffirmed in 1875 and that consequently the courts are not bound to apply acts of parliament in violation of those principles.⁵¹ But the courts refuse to proceed on this theory and they have regularly applied acts which were clearly in violation of the declaration of rights of 1789.⁵²

Many writers who deny the right of the French courts to declare acts of parliament null and void because of their material inconsistency with the constitution nevertheless admit that they may refuse to apply an act for reasons of formal invalidity. Thus if a law is not enacted by the two chambers in accordance with the constitutional prescriptions in regard to the exercise of the legislative power or if it is not regularly promulgated by the president of the republic the courts are not bound to apply it. In other words, while the courts may not control the material content of legislation they may control its extrinsic form⁵³ and

⁵⁰ Seignorel, "Le Contrôle du Pouvoir Législatif," *Rev. Pol. et Parl.*, vol. 40 (1904), pp. 91-92; see also Larnaude, *Bul. de la Soc. de Lég. Comp.*, 1902, p. 219.

⁵¹ For example, Duguit, *Droit Const.*, vol. ii, pp. 6, 13, and Coumoul, *Le Pouvoir Judiciaire*, p. 229. These writers affirm that the principles of 1789 had become so firmly established that it was unnecessary to reaffirm them in the constitution of 1875. But compare Esmein, *Droit Const.*, pp. 496 and 501, to the contrary.

⁵² Cf. Duguit, *Droit Const.*, i, pp. 19, 20 and Seignorel, p. 538.

⁵³ Such is the view of M. Jèze, *Principes Généraux*, p. 212 (see also his note on the *Ronaux* case of 1903, *Rev. du Dr. Pub.*, 21: 117); Laurent, *Principes de Droit Civil*, vol. i, sec. 3; Duguit, *Droit Const.*, vol. i, p. 159; and apparently Larnaude, *op. cit.*, p. 220.

the court of cassation in the case of 1833 referred to above seems to have admitted this view.

Those who deny the right of the courts to declare acts of the legislature null and void because of their material invalidity rely, first of all, on the theory of the separation of legislative and judicial powers, proclaimed in 1789, and the express interdiction imposed on the judges by the law of 1790 from interfering with the acts of the legislature or suspending their execution.

Others⁵⁴ argue that an act of parliament is an emanation of the sovereign will, and cannot therefore be subjected to review, modified or nullified by any authority or organ of the government. This idea, which goes back to Rousseau⁵⁵ and which was affirmed in the declaration of rights of 1791, 1793 and 1795 has curiously enough persisted in France until this day. But such an argument, as many French writers have pointed out⁵⁶ is specious. They hold, and very properly, that an act of parliament is not an act of sovereignty; it is not necessarily an expression of the *volonté générale*—but is simply the will of a governmental organ, nothing more. Others argue that to allow the French courts such power would provoke conflicts between the legislative and judicial authorities and would put into the hands of the courts the power to obstruct legislative reforms—a power which was tyrannously exercised by the *parlements* of the *ancien régime* and the memory of which led the Revolutionists to deprive by positive law the judiciary of all control over legislation. Finally, it is argued that the conditions, which prevail in France, the habits and the temperament of the French people are so different from those of the United States that the argument from American experience cannot be regarded as decisive.⁵⁷ But there have always been able and distinguished advocates in

⁵⁴ Tessier, for example, *op. cit.*, p. 15.

⁵⁵ *Contrat Sociale*, bk. ii, Ch. 6.

⁵⁶ Notably Jèze, *Principes Généraux*, p. 209; Duguit, *Transformations du Droit Public*, p. 85; and Cahen, *Le Loi et le Règlement*, p. 424.

⁵⁷ For example Larnaude, *op. cit.*, pp. 225, 227 and Seignorel ("Le Contrôle du Pouvoir Législatif," *Rev. Pol. et Parl.*, 1904, p. 534). "With our ideas in respect to popular sovereignty," says Seignorel, "we can never permit a single assembly composed of eight or ten judges to hold in check the will of the legis-

France of the American doctrine and the number has steadily increased in recent years.⁵⁸ In the national assembly which framed the present constitution, Louis Blanc, speaking on the subject in the session of March 11, 1873, said: "I say finally that in order to hold in check the despotism of a single assembly the better means would be that which would result from giving to the judiciary the right to annul unconstitutional laws."⁵⁹ In the same assembly M. Naquet advocated the creation of a supreme court on the American model with similar powers in respect to unconstitutional legislation⁶⁰ and in 1894 while a member of parliament, he proposed an amendment to the constitution with this object in view.

The question has in recent years provoked widespread discussion and the American doctrine has been defended by many jurists, notably by Professor Beauregard of the Paris law faculty and a member of parliament,⁶¹ by Charles Benoist, a veteran member of the chamber of deputies, and a distinguished scholar, well known for his tireless championship of proportional representation;⁶² by Judge Coumoul of Toulouse,⁶³ Professors Duguin,⁶⁴

lature, i.e., the will of the nation itself." "Moreover," he adds, "it is perilous to borrow from a foreign country an institution which would not be suitable to our customs, our national temperament or to our political organization." Compare also Boutmy, *Elements d'une Psychologie Politique du Peuple Américain*, p. 256.

⁵⁸ Faustin Hélie one of the great jurists of the July monarchy was apparently such an advocate, for he says: "The application of the laws is the end of justice; but this application necessarily requires that the judge shall determine whether the acts invoked before him are law and what is their meaning. The tribunal of police cannot do other than exercise in regard to ordinances the right that all tribunals exercise in regard to the laws; they verify their legality and interpret them." *Traité de l'Instruction Criminelle*, vol. vi, p. 182.

⁵⁹ *Journal Officiel*, Mar. 12, 1873, p. 1707.

⁶⁰ See his *La République Radicale* (1873), Ch. xi.

⁶¹ See his article in the *Monde Economique*, vol. ii, p. 411 (1894).

⁶² See his article in the *Revue de Deux Mondes*, July 15, 1902; also his *Reforme Parlementaire*, Chap. on "La Cour Suprême." In 1903 M. Benoist introduced in the chamber of deputies a proposition to incorporate the declaration of rights into the constitution and to give the Court of Cassation power to annul all legislative acts in violation of the provisions of the declaration (*Journal Officiel*, Ch. des Deps., Apr. 29, 1903).

⁶³ *Traité du Pouvoir Judiciaire*, pp. 224.

⁶⁴ *Transformations du Droit Public*, pp. 97 ff.

Cahen,⁶⁶ Moreau,⁶⁶ Hauriou,⁶⁷ Jèze,⁶⁸ Saleilles,⁶⁹ Thaller⁷⁰ and Jalabert;⁷¹ and by M. Picot,⁷² M. Devin⁷³ and others less well known.

In regard to the argument based on the principle of the separation of powers they point out that the law of 1790 forbidding the judges to interfere with the execution of the laws was designed to meet a situation that no longer exists. The judges at that time were suspected of being out of sympathy with, if not actually hostile to, the reforms inaugurated by the Revolutionists and it was feared that they would stand in the way of the realization of those reforms just as the old *parlements* had blocked the measures of Turgot, Necker and Malesherbes. The law of 1790 was therefore an exceptional measure intended to break the opposition of the judiciary to the new order of things. But the danger from a hostile judiciary in France has long since passed, and the judges today are neither opposed to the republic nor to the reforms advocated by Republicans.⁷⁴

A court which refuses to apply an unconstitutional law, says Duguit, does not interfere in the exercise of the legislative power nor suspend the execution of a law; it merely refuses to apply what purports to be a law but which in fact is no law; to compel the courts to apply such a law is to force them to violate the con-

⁶⁶ *La Loi et le Règlement*, pp. 377 ff.

⁶⁶ *Le Règlement Administratif*, p. 261.

⁶⁷ *Droit Administratif et de Droit Public*, 8th ed., p. 39.

⁶⁸ *Principes Généraux*, pp. 208, 224; "Contrôle des Délibérations des assemblées Délibérantes" in the *Rev. Gen. d'Admin.*, 1895, pp. 401-415. See also his brief (in collaboration with M. Bethelémy) in a case before the supreme court of Roumania, in the *Revue du Droit Public*, vol. 29, pp. 139-156. Largely on the strength of their argument the court in 1912 declared unconstitutional a Roumanian statute. See the decision in the *Rev. du Droit Pub.*, vol. 29, pp. 365-368.

⁶⁹ *Bulletin de la Société de Lég. Comp.*, 1902, pp. 240-246.

⁷⁰ *Ibid.*, p. 249.

⁷¹ *Ibid.*, p. 253.

⁷² Same bulletin for the year 1900, p. 75; also his *La Réforme Judiciaire*, pp. 217-219.

⁷³ *La Loi*, Nov. 26, 1896. The arguments of MM. Jèze, Coumoul and Cahen in favor of the right of the courts to disregard unconstitutional legislative acts are especially full and convincing.

⁷⁴ This fact is especially emphasized by Jèze, Duguit, Cahen and Coumoul.

stitution and the effect is to reduce them to a position of dependence upon the legislature, which is itself a violation of the principle of the separation of powers.⁷⁵

Again it is pointed out that the courts have power to refuse to apply illegal ordinances; that there is no essential difference between the right of the judge in the two cases; if therefore, the exercise of the power in one case is a violation of the principle of the separation of powers it must be equally so in the other case. Ordinances of public administration according to the jurisprudence of the council of state are a form of delegated legislation and, as has been shown above, this legislation is often general and important in character. Yet no one asserts that it is a violation of the principle of the separation of powers to allow the courts to control this species of legislation.⁷⁶ Furthermore, the French jurists generally admit that the courts may refuse to apply an act of parliament which is formally invalid, that is, one which has not been enacted and promulgated in accordance with the formalities of procedure prescribed by the constitution.⁷⁷ Now the distinction between formal and material invalidity has no sound juridical basis. Constitutional injunctions and prohibitions are all of the same force; there is, therefore, no essential difference between the violation by the legislature of a constitutional rule of procedure and the violation of a substantive provision. If the courts may hold the legislature to the observance of the one class of constitutional provisions why should it be denied the right to compel observance of the

⁷⁵ *Transformations du Droit Public*, p. 97. For a similar line of argument see Coumoul, Ch. 6. Coumoul concludes his defense of the right of the courts to declare unconstitutional laws null and void as follows: "In reality therefore there are neither obstacles of law nor fact which prevent the judiciary from fulfilling its natural rôle in its relations with the legislative power—a rôle imposed by juridical logic, by the results of established principles and even by the force of things. The only reason for its inaction is its organic feebleness, its subordinate position, and, one may say, its inexistence as a great authority of the State" (p. 231).

⁷⁶ The argument from the analogy of judicial control of ordinances is developed at length by Cahen, pp. 383, 423.

⁷⁷ This opinion is held by Laferrière, *Traité*, vol. ii, p. 9; and by Larnaude, *op. cit.*, pp. 220-221.

other? Finally, and this is the most important argument, if the legislature may modify or abrogate a provision of the constitution at will subject to no restriction, the constitution, as Cremieux pointed out in his plea before the court of cassation in 1833, is an illusion; it can have no real existence except in so far as the legislature may choose to respect its provisions.

Such is the legal fact. Whether the courts will ever assume to exercise the power which many French jurists now maintain that they already have a legal right to do, is a question which cannot be answered. Professor Duguit thinks it is only a question of time when the American practice will be introduced in France; the council of state especially by its decision of 1907 admitting recourse in annulment for excess of power against ordinances of public administration has, he says, already prepared the way; such ordinances differ in no intrinsic respect from statutes and it is therefore only a short step to the recognition of a similar recourse against the latter class of laws.⁷⁸ The late Professor Sa-
leilles said in 1902 that he had not lost all hope of seeing recognized the right of the French courts to pronounce the nullity of laws in violation of rights clearly defined in the constitution.⁷⁹ But others are less optimistic.⁸⁰ It is quite certain that so long as the present notions regarding the political preponderance of parliament continue no court is likely to assert any direct or indirect control over its acts and, if it should, parliament would not tolerate it, for it is extremely jealous of its prerogatives as over against the executive and the judiciary.

After all, the matter is of far less practical importance than in the United States where the constitutions are instruments of specifically delegated and prohibited powers. It must be borne

⁷⁸ *Transformations du Droit Public*, p. 103.

⁷⁹ *Bul. de la Soc. de Lég. Comp.*, 1902, p. 241.

⁸⁰ M. Jèze for example, commenting on the view of Moreau and Duguit that the decision of the council of state in the *Winkel* case in 1909 was in effect a refusal to apply a provision of the law of finances of 1905 in regard to the removal of public officers, says: "I do not believe anyone can cite a single case in which a court has declared a law unconstitutional, and I do not for my part see a single indication in favor of a change in the existing jurisprudence, however much it may be desired. *Principes Généraux*, p. 212.

in mind, that the French constitution is merely a law of organization; it does not undertake to define and enumerate the powers of the legislature, and, as has been said above, aside from the few rules regarding procedure, it contains no direct or indirect prohibitions on the legislative power. If, therefore, the courts had the unquestioned right to annul acts of parliament for unconstitutionality there would be few occasions for exercising it, because few acts can be contrary to the constitution in its present form.⁸¹ For this reason some writers take the position that little or nothing would be gained by allowing the courts such power, until individual liberty has been "constitutionalized."⁸² Finally, the absence of a clear distinction between the constituent and legislative powers would render the system of judicial control ineffective in the face of a parliament determined to make its will prevail regardless of constitutional restrictions. Both the constituent and legislative powers in France are vested in the same body, and if the courts should refuse to apply an act which is contrary to the constitution parliament would only have to organize itself in national assembly and "constitutionalize" the law thus nullified, after which it would be beyond the control of the judiciary.⁸³ To make judicial control of unconstitutional legislation really effective, therefore, it is necessary to separate more completely the legislative and constituent powers and entrust them to different organs as is done in the United States.

⁸¹ "To speak truly," says Cahen (*La loi et le Règlement*, p. 424) "France has no true constitution; it has laws which fix the organic relations of the public authorities but it has no charter of public liberties in the absence of which the men of the revolution said there could be no constitution." "In France I repeat," says Seignorel (*Rev. Pol. et Parl.*, 1904, p. 536), "we have no constitution; we have only laws relative to the functioning of the public authorities. In this respect we are in a condition of notorious inferiority as compared with other countries."

⁸² Such was the opinion of Professor Saleilles, *Bul. de la Soc. de Lég. Comp.*, 1902, pp. 245-246. Compare also the comments of Prof. W. F. Dodd, "Political safeguards and judicial guarantees," in the *Columbia Law Review*, April 1915, p. 12.

⁸³ Compare the remarks of Seignorel on this point, p. 519.

THE SUBSTITUTION OF RULE FOR DISCRETION IN PUBLIC LAW¹

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The course of recent legislation for the regulation of commerce, trade and industry has created the impression that there exists a tendency in our law to transfer powers of determination from the courts which act according to fixed principles to administrative commissions or officials vested with large discretionary powers.

Considering that normally the progress of law should be away from discretion toward definite rule, such a tendency should receive the most careful examination. The first inquiry should however be whether and to what extent the impression is substantiated by facts.

The advent of the new administrative power is in the public mind associated chiefly with public utility and industrial commissions first created for the control of railroads, for the earlier powers over banks and insurance companies, as well as those of medical and other licensing boards, attracted relatively little attention or comment.

These commissions have indeed been vested with powers of a type hitherto withheld from administrative authorities under our system, powers which are not intended to serve as instruments of a fully expressed legislative will, but which are to aid the legislature in defining requirements that on the statute book appear merely as general principles.

While this undoubtedly constitutes in a sense a delegation of legislative power, it is not always equally certain that there is also a substitution of a wide administrative discretion for a fixed

¹ This paper was read at a meeting of the Legal-Philosophical Conference in Chicago, in April, 1914.

rule to be administered judicially. It is true that such a substitution takes place, where e.g., a definite legislative railroad rate is repealed in favor of a commission power to fix a rate required by statute merely to be reasonable.

But has it been as a matter of fact the course of the new legislative development to supersede specific by generic rules? Probably there are such cases, though I know of none in the field of railroad legislation. The evolution has rather been from generic legislation to administrative power to carry such legislation into effect by specific requirements.

How did that generic legislation operate? By leaving the question whether it had been complied with to a determination by a judicial proceeding. Reasonableness, safety, adequacy, etc., thus became issues in a civil or criminal action, and as mixed questions of law and fact they went to a jury under instructions by the court. Notwithstanding these instructions there remained a very considerable discretion with the jury. In criminal proceedings this was apt to operate in favor of the accused, because a jury will not lightly send a person to prison, but in civil cases for damages, especially against a corporation, the plaintiff was not unlikely to win a verdict from a liberally inclined jury.

In labor legislation therefore employees prefer a generic to a specific rule. It has been observed that under the present mining law of Illinois which contains very specific requirements, the chances of recovery are impaired by the result turning on the presence or absence of certain safeguards, while on a general issue of safety a jury might find a verdict in favor of the plaintiff. Obviously, the element of discretion allows the play of sympathy and is therefore desired by those counting on sympathy.

✓ The result of the new administrative power, though likewise in a sense discretionary, is plainly the other way: it substitutes for the more or less arbitrary judicial action—arbitrary because delegated to a jury—a fixed and responsible rule.

The new development is therefore not such as is often assumed, but the very reverse.

✓ The real significance of administrative ruling authority then does not lie in any diversion of genuine judicial power, but in relieving the judiciary from functions in their nature more or less legislative.

It will be asked: why, if the judicial enforcement of vaguely formulated requirements was not satisfactory, were statutes not made more specific? The answer is, that this has been done to a considerable extent, notably in the domain of labor legislation and of safety requirements, the mining and factory legislation of Illinois furnishing conspicuous illustrations in point.

In railroad legislation, however, which shares with liquor legislation the distinction of having furnished American constructive statutory policies their strongest opportunities and tests, a similar specialization whether in the matter of rates or service requirements, has proved impracticable, and it was therefore in this field that the delegation of quasi-legislative powers set in. It is much more recently that it has been advocated for other industrial legislation, as being calculated to secure greater flexibility and adaptability to circumstances, and the principle has had its most notable triumph in the minimum wage legislation of 1913, Utah alone having ventured upon a direct legislative schedule of rates. Most typical of the new legislative policy is however the Wisconsin industrial commission act of 1911 which simply requires employers "to furnish employment which shall be safe for the employees and to furnish places of employment which shall be safe for employees and frequenters, and to adopt and use methods and processes reasonably adequate to render places of employment safe."

If the main purpose of the new departure is to be greater flexibility, and by flexibility we are to understand not merely differentiation but variability of regulation, it can be endorsed only with great reservations. Differentiation can be secured by statute as well as by administrative ruling. Variability, on the other hand, is desirable only in very few phases of social or economic regulation, while industry needs above all permanence and continuity of policy and requirement. If the delegation of powers were to encourage impermanence and fluctuation, though in

pursuance of a progressive policy, the result might easily become intolerable.

It is probably needless to entertain undue apprehensions in that respect; the force of circumstances will impose upon commissions a proper degree of conservatism, and if inferences may be drawn from foreign experiences, it is worth noting that American statutes change more frequently than the regulations of the German Federal Council.

Weighing relative advantages, it may be expected that administrative action can be set more easily in motion than legislation, and that it can better plan a program of gradual development; that while administrative authorities have a better sense of what is practically enforceable, legislatures have a keener sense of what is politically expedient, that while the former can mix suasion with command, the latter can invest their commands with greater publicity and a higher moral authority. Administrative action will be preferred by those who believe in regulation, legislative action by those who consider regulation a necessary evil.

Administrative action has however the indisputable, though incidental advantage, that it permits the process of establishing rules to be surrounded by procedural guaranties and other inherent checks which will tend to produce a more impartial consideration than the legislature is apt to give, and which should in course of time, if not immediately, substitute principle for mere discretion. Such a result would mean an enormous step in advance for our entire system of public law, and it is therefore important to inquire whether we are justified in expecting it.

It is not of course contended that this result necessarily attends the vesting of discretionary power in administrative authorities. On the contrary the history of discretionary administrative power would seem rather discouraging. It is not necessary, in order to prove this, to refer to so conspicuous an instance of the arbitrary exercise of administrative discretion as the valuation of property for purposes of taxation, for the demoralization of administrative action is here plainly due to impracticable or mistaken legislative policies, and if public opinion insists upon a policy in legislation which it repudiates in administration, there will be an inevitable loosening of administrative standards.

It is fairer to test the operation of discretionary powers by such normal administrative functions as the appointment and removal of officers, or the grant of licenses. Unlimited and unregulated control of official tenure led to the prostitution of the civil service to the game of party politics, and the remedy is now sought in the enactment of civil service laws, the main purpose of which is to reduce or altogether eliminate discretionary power. In the matter of licenses, discretion has generally been qualified, and upon the basis of the qualifying restrictions the courts have on the whole been able to cope with gross abuses of discretion. There remained however enough of favoritism and corruption to lead the State of New York to abandon the system of discretion altogether in the matter of selling liquor, and in Germany all trade and business licenses are granted upon the basis of conditions which make administrative discretion judicially controllable.

✓ Generally speaking, therefore, it would seem that discretionary administrative powers have not been signally successful. Nor is this surprising: for in a government by law discretion ought to have a very limited place in administration. Its legitimate function is indicated by the organization of a chief executive power which stands for that residuum of government otherwise subject to law which cannot be reduced to rule. Where discretion appears in inferior positions, it is either the confession of inability to discover a guiding principle, or the deliberate preference of personal influence to more objective considerations, i.e., the more or less unavowed manifestation of the shady and corrupt aspects of government.

It is a striking historic fact that the organization of English administration has had a strong judicial cast until the simplicity of that system broke down under the demand for more technical functions of administration. Judicial administration meant the exercise of discretion in forms which secured at least some of the benefits of rule and system.

Those processes to which rule could not be well applied—including the ascertainment of facts and values—the spirit of the English law was averse to entrust to the regular organs of the

administration, and they were consequently vested in the organs of self-government: jury, justices of the peace, and locally elected officers.

And in the like manner the function of government, which in a manner stood above and outside of the law: the variable element of policy, the constant readjustment of political life and of government to changing economic and social conditions—in other words, the function of legislation, was eventually withdrawn from the permanent organ of the state, the crown, and vested in the people's representatives.

The development of political institutions in America emphasized and strengthened what may be called the irresponsible elements in government. Much of the administrative business that in England had been in the hands of the justices of the peace and had been treated by them in a semi-judicial manner was transferred to purely administrative authorities, and these were placed upon a self-governmental, non-professional basis. The power of the jury, the least responsible of all the factors of government, was enlarged at the expense of the judiciary, the one stronghold of professionalism, and in allowing juries to determine sentences in criminal cases, the most incisive exercise of governmental power was made the type of the most arbitrary discretion. The functions of the legislature were increased by adding to the determination of policies and the control of finance, the chartering of corporations and the initiation of public works and improvements. And the legislatures gained an independence of executive guidance and initiative such as no other legislative bodies have ever had.

We get this peculiar vicious circle in the relation between discretion and self-governmental organs: a function which is exempt from rule because no applicable rule is known or none is desired—in itself a symptom of some governmental anomaly or imperfection—is committed to authorities which are closest to the people, elected, non-professional, holding by a brief tenure; and being in the hands of such authorities, the function is bound to retain the arbitrary type of discretion, for self-governmental organs lack the inherent checks which in professional organs evolve

principle out of constantly recurrent action. This is certainly borne out by American experience.

If we examine the history of our administration, there has never been any ascertainable standard in the selection or removal of officials until the advent of civil service commissions. There is no more important function than the grant, refusal or revocation of liquor licenses: is it possible to point to any American jurisdiction in which the administrative practice in this matter has been reduced to a recognized system? In Massachusetts there is a statutory power to revoke amusement licenses at pleasure; such a power is intolerable if not exercised in accordance with known rules, but no rule has been laid down in print and probably none exists.

Legislation is equally poor in self-imposed norms. The nature of legislative action, dealing as it does with constantly new problems by new and untried remedies, naturally demands greater freedom of movement. Conceding this there remains much even in the business of legislation that is reducible to principle. The spirit of the equal protection of the law demands a firm adherence to uniform intelligible criteria of discrimination; requirements of health and safety should be standardized, and in economic adjustments there should at least be a submission to the generally accepted truths of political economy.

It is not of course meant to imply that all legislation falls short of these standards, but merely that there is not the slightest assurance of uniformity of standards, and that the absence of rule inevitably results in an excessive proportion of inferior and defective measures. The condition may be assumed to be notorious; were it necessary to substantiate the charge, it would be sufficient to point to the bulk of our legislation. The combined collection of statutes for Prussia and Germany for 1911-1912 covers 483 pages, the English statute book (for the entire United Kingdom) for 1911 458 pages, for 1912, 146 pages. The acts of the sixty-second Congress from December 1911 to March 1913, are contained in two volumes of large size, the public acts alone covering 1026 pages, and the private acts 423 pages in addition. The Session Laws of New York for 1911 cover 2751 pages, for

1912, 1377 pages, for 1913, 2220 pages. It is probably true that Congress and New York represent the worst type of American legislation; Illinois makes a much better appearance; but every student of legislation is painfully aware of the mass of crude and ill-digested matter that annually or biennially emanates from our legislative halls.

It is particularly instructive to compare special legislation in America with special legislation in England. Parliament being controlled by powerful traditions curbing discretion, evolved methods of procedure in passing private acts which invested the enactment with the uniformity of judicial procedure. Thus divorces were granted only on strictly limited grounds, and the method of procuring them was rigidly prescribed and never departed from. In America the same matter was sometimes treated as a joke, as where an act of Missouri granted a divorce because the parties could not live happily together and "because the happiness of the people should be the ultimate aim and object of all governments." So much of special legislation went by favor or corruption that in many States it was deemed wisest to suppress it entirely by constitutional prohibition.

If in Europe legislation is a more orderly and systematic matter than in America, if it is possible to discern in the diversity of legislative policies a steadfast adherence to controlling principles at least in the technical and objective phases of statute law, this is due chiefly to the initiation of nearly all important measures by the organs of the executive government. Even with the greatest freedom of parliamentary amendment legislation retains the character given to it by its introducers. Executive preparation impresses upon it such unity of tradition and purpose as the government itself possesses, and the necessity of defending measures in the face of parliamentary criticism compels the government to fortify itself at least with the show and semblance of principle.

It is noteworthy that after a thorough inquiry into a department of legislation in which the absence of rule and system has been particularly prejudicial to public interests, viz., the appropriation and expenditure of public moneys, a recent presidential

commission urged the preparation of systematic estimates by the executive as the only adequate means of standardizing public finance. The suggestion met with no favor on the part of Congress. It is of course difficult to convince Congress that it has not only fundamentally mismanaged a business to which the greater portion of its labors has been directed, but that by the nature of its constitution it is incapable of effecting a reform without outside aid.

But it is not beyond the range of possibility that public opinion will insist upon the executive assuming a controlling share of legislative initiative, and if so we might well expect a duplication of European conditions.

It will be asked: have we not a body of constitutional law to provide us with principles of legislation? The answer must be rather negative.

Insofar as judicial control over legislation is exercised on the basis of fundamental guaranties, it enforces a minimum and not a maximum of reasonableness of legislation, and is therefore no substitute for the principle producing factors in the European systems; on the contrary, the judicial point of view is liable to impress itself upon legislators to the extent of inducing the belief that constitutionality is an adequate standard of principle and justice.

If constitutional law looms large in our estimation it is on account of its practical importance in litigation. Being an essential tool to lawyers, it has given rise to an enormous literature. The very much more fruitful principles of legislation evolved in the government departments of Germany, France, and Great Britain on the other hand cannot become the subject of forensic discussion, and have remained a bureaucratic tradition, unarticulated and unformulated in systematic exposition, and they are generally regarded as lying outside of the domain of legal science.

Nor should we expect the evergrowing bulk of our written constitutions to yield an adequate supply of principles of legislation. Not as if the governmental experience of the nineteenth century had not been crystallized into some limitations of the utmost

value; but let any one study the trend of our written constitutions, and he will be surprised to find to what slight extent our constitutional conventions have been principle producing agencies. The constitution-making democracy concerns itself very little with the quality of legislation.

It would also be unwarranted to treat the present tendency to delegate the specification of generic legislative requirements to administrative commissions as a beginning of a revolution in our legislative practice; for it is only within very narrow and definite limits that the practice is constitutionally desirable and legitimate.

So far as it goes however, it will furnish a capital object lesson of the development of rules for legislative action. It is obviously the legislative intent that administrative action in the exercise of delegated powers of subordinate legislation shall be of a superior type, that it shall be quasi-judicial, and—in some cases—subject to judicial review.

We have come to associate a due recognition of permanent principles with the administration of justice and its methods of procedure tending to emphasize the impartial and objective point of view. The judiciary has however by no means a monopoly in this regard. Similar results are likely to attend other official action, provided that it be sufficiently detached from the strife of interest and imbued with a sense of professionalism. It shares with judicial action the respect of precedent and the respect of expert opinion, habits of mind which distinguish both from the irresponsible action of popular bodies.

So far as can be judged from the practice hitherto pursued by the Interstate Commerce Commission, by state public utility and industrial commissions, civil service commissions, and accident boards, the main conditions will be observed which are apt to produce a body of principles for the framing of rules. Even the absence or scarcity of statutory direction for the exercise of the rule-making power may be condoned if it means that the legislature believes that wiser observances will assert themselves by the gradual operation of judicial procedure and of precedent. It will remain to be seen whether ultimately it will not be necessary to

give to these directions a statutory form. The next ten or twenty years may be expected to teach us a good deal with regard to this matter.

Though the movement is yet in its beginning, we have already rule-making administrative bodies dealing with such diverse matters as fixing of rates, valuing property, standardizing efficiency and compensation in public service, prescribing health and safety requirements, fixing tests of disability, and advising or prescribing wage schedules.

Probably all these matters are not in an equal degree amenable to rule and principle. Not all government can be standardized. In the ordering of public as of private affairs, there is a legitimate place for wisdom and judgment, and even, where there are hidden or imperfectly understood forces and agencies, for speculation and chance.

Even in these matters there may be a limited opportunity for applying principle. Though it be impossible scientifically to determine standards of service or of compensation, it may be possible to estimate certain considerations at their true value and give them effect accordingly. Public undertakings will probably always remain matters of discretion, but their financing can well become matter of rule. And so all along the line. Not the least valuable effect of a wise delegation of power will be that it may enable us in the light of experience to judge better the respective provinces of rule and discretion, and organize public action accordingly.

THE TREND WITHIN THE BRITISH EMPIRE

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I

Notable among the realities brought into sharp relief by the present war, is the spontaneous display of loyalty on the part of the British dominions. These "new nations within the empire," notwithstanding a natural pride in their embryo consciousness of nationhood, have enthusiastically and of their own volition rallied to the support of Britain the head of this same empire. The apparent anomaly inherent in this state of affairs merits notice in view of its importance as a bed-rock principle in the politics of the empire. Moreover, the unique political status enjoyed by the dominions invites attention by reason of its very disagreement with the traditional view generally held as to the normal relations between colony and parent state.

It is only within the past decade and a half that the older of the British dominions, bursting the colonial chrysalis, have begun to emerge into nationhood. Amid the transitions of the present age none is more significant than that which is changing the structure and organization of the empire. That this transition has not been more generally recognized is not surprising. Even the inhabitant of the British Isles has found it difficult to understand the attitude and temper of his fellow-citizen of the colonies. To the Englishman of the past the notion of imperial union was based on a helpless and enforced "loyalty." While talking easily of an alliance of the British dominions he looked askance on the aspirations and proposals of the colonials and attempted to maintain his own supremacy. Happily, however, British statesmen of vision began to take cognizance of the growing sense of nationality which was permeating the dominions.

It was apprehended that Canada and her sister states, peopled by men "born of the blood," would sever the tie some day if they were not permitted to acquit themselves as nations. Only a mild form of surprise, therefore, need be felt over the fact that, at the colonial conference of 1907, the secretary for the colonies concurred in the principle laid down by the British prime minister that "the essence of the imperial connection" is to be found in "the freedom and independence of the different governments which are a part of the British empire."

During the years since this significant declaration was uttered, events have conspired to make more real the ideal of a Britannic alliance toward which many believe the empire has been tending. This alliance or league of free states—Great Britain, Ireland, Canada, Australia, New Zealand, and South Africa—it is maintained would be held together partly by mutual advantages and partly by sentiment. Possessing nationhood and political equality, the members of the alliance would coöperate in war and peace under agreed conditions. In a prophetic utterance of Sir Wilfrid Laurier lies the kernel of the creed of the imperialist. "We are going to build the British Empire," declared Sir Wilfrid, in July, 1910, in the course of an address in the Canadian West, "on the rock of colonial autonomy, and that local autonomy is consistent with imperial unity."

The spirit of colonial nationalism, so powerful a force in each of the dominions, is based on two fundamental principles. In the first place, these states are strongly determined to remain members of the empire, whereas, in the second place, they are equally determined to retain, if not to increase their rights of self-government, already practically complete. This seeming paradox is a monument to British statesmanship, blind and halting as the latter has appeared at times.

To the average man, not a citizen of the empire, this condition of affairs is difficult to comprehend. Indeed it is not unlikely that many in Germany anticipated that England's participation in the war would present an opportunity, which could not be resisted, for Ireland, India, and perhaps other states to weaken, if not destroy, their British connection. General von Bernhardt,

in fact, in *Germany and the Next War*, calls attention to this very possibility. There is peril to England, he asserts, "in the nationalist movement in India and Egypt, in the growing power of Islam, in the agitation for independence in the great colonies, and in the supremacy of the German element in South Africa." "The coöperation of these elements," Bernhardt anticipated, "might create a very grave danger capable of shaking the foundation of England's high position in the world." That this has not occurred is not an accident. An explanation may be drawn from a statement of the late Admiral Mahan. In a letter to an English friend in October 1914, he declared, apropos of England's participation in the war, that "the testimony to the uprightness and efficiency of her imperial rule, given by the strong adhesion and support of India and the dominions, is a glory exceeding that of a pitched battle and overwhelming victory."

Whereas with the self-governing dominions, peopled for the most part by Anglo-Saxons, natural race sentiment has played a part in the determination of the public attitude, in no wise can it be urged that such a feeling has had any bearing on the decision of India. Although the aim of the present paper is to point out certain aspects of the present status of the dominions and to venture an opinion as to the future, it may not be amiss to refer in passing to the case of India.

II

With naïve candor, the underlying cause of India's loyalty in the present juncture is revealed in a statement of the Nizam of Hyderabad, the largest Mohammedan state in India. This Indian prince is reported to have declared that "it is the bounden duty of the Mohammedans of India to adhere to the British, for there is no other country in the world where Moslems enjoy such liberty as they do in India." The gratuitous offers to England by Indian princes of supplies of the "sinews of war" would lend color to such words. Although India has no great love for England as England, she has a deep attachment for the ideal of free institutions and fair dealing which the Englishman has attempted to realize in his administration of the great eastern dependency.

The intelligent leaders of India recognize the fact that no other régime, attainable at present, would result in any greater, if indeed as much, freedom and justice as is at present in existence. The present adherence of the East Indian to British rule is the logical outcome of a dispassionate scrutiny of the demands of his own best interests. In the opinion of Saint Nihal Singh, "India today is inspired with the desire not merely to preserve the *status quo* into which it has been drifted by the tide of fate, but longs to weld the bonds that link it to the British empire—to become a willing partner in the federation." In commenting on a paper read at a meeting of the East India Association on November 23, 1914, on "India's Rally round the Flag," Mr. Synd Hassain, a Mohammedan, declared that in "the convinced opinion of every educated Indian the future salvation of India was bound up in adequate, honorable and equal coöperation with the British." Continuing, he urged that "apart from other considerations, on the sheer ground of self-interest and of the well-being and prosperity of India, they meant to stand by England through thick and thin."

Once this fact is recognized less surprise will be occasioned by India's refusal to engage in a holy war on the side of Turkey. Upon the entrance of Turkey into the European struggle as an ally of Germany and Austria with the accompanying call upon all Moslems to join the standard of the Sultan, a rejoinder was evoked from His Highness Aga Kahn, the spiritual head of the Mohammedans in India. In a message to his people he declared that, "Turkey has now lost her position as trustee of Islam. She has drawn her sword in an unholy war and it is the duty of Moslems of today to remain faithful to their secular and temporal allegiance." Accordingly the spectacle is presented of Mohammedan troops warring against fellow religionists. Native regiments from India have eagerly volunteered for service. In no small degree the failure of the Turkish expeditions against Persia and Egypt is to be attributed to the resistance offered by British Indian troops.

However, it must not be assumed, therefore, that India is entirely satisfied with British rule as it stands to-day. Although,

as Tajpat Rai, a leader of the nationalist party in India, has recently averred, "India is determined to take her rightful position in the world, if possible, as a member of the British empire," political conditions prevailing in the country are not yet entirely to their liking.

That a real economic advance has been brought about in India through the efforts of England will probably be conceded by most unbiased observers. The British have acted on the principle that material welfare must precede, or at least accompany, genuine political evolution. Accordingly in a country so dependent on an adequate water supply irrigation systems have been extensively developed. By March, 1907, there had been constructed 55,928 miles of main and branch canals commanding 50,000,000 acres of land fit for cultivation, and the area actually irrigated in 1906-1907 was 21,992,683 acres. There were over forty additional projects either under construction or subject to government investigation. One of these schemes, approaching completion, is to carry the water of the Kistna River to seven counties and reclaim or increase the productivity of thousands of acres. As further evidence of the effort of the government to meet the needs of the population, witness the improvements made in transportation facilities. Approximately 35,000 miles of railways have been constructed and the country is also being provided with a network of macadamized roads, over 60,000 miles of such highways being already in existence. India is also the scene of a gratifying industrial development. Between 1870 and 1911 the number of cotton and jute mills increased from 78 to 293. During the same period the output of petroleum jumped from 6,000,000 gallons to 225,792,094 gallons. Coal production has been rapidly developed, the yield in 1911 equalling 12,715,534 tons. In 1912 there were 2463 joint stock companies; the number being three times what it was in 1877, while during the same period their capital also showed growth. The government has steadily increased postal and educational facilities, spending during the year 1914, approximately \$20,000,000 on education. The systems of land tenure and land revenue assessment have undergone much needed reforms, taxes have been rendered

lighter, and a strict impartiality has been insisted upon in the courts of justice.

Although India is a land of poverty, the condition of the people is improving. In the annual address of the Parsee chairman of the Bombay Stock Exchange a few years ago, it was asserted that "it is the conviction of merchants, bankers, tradesmen, and captains of industry that India is slowly but steadily advancing along paths of material prosperity." There is one very real grievance, however, of an economic nature. The countervailing duties levied on cotton fabrics and yarns made in Indian mills, in order to prevent the import duty from serving as protection to the Indian manufacturers as against those of England, may legitimately be deemed a hardship. The popular impression that a part of Indian revenues is appropriated by England as a species of tribute may summarily be dismissed. Every farthing of Indian revenues is either expended in India for services rendered or is sent out of the country for the legitimate purposes of providing pensions to retired Indian officials and of paying interest to foreign lenders of capital invested in India.

As to the political grievance that the administration of India has been carried on too much for the benefit of the rulers themselves, a brief reference will suffice for the purposes of this paper. It should be pointed out that since 1879 the number of Indians in public service has been steadily increasing. In the government of India the British have aimed at administrative efficiency pure and simple, with the result that formerly few positions of responsibility were filled by natives. That a rapidly growing number of offices of power and dignity are now being filled by Indians is not due to a waning desire on the part of the British to preserve the cherished traditions of the civil administration but rather to the ability of the natives to meet the required tests. Not the least important achievement of British rule has been the building up of a large body of Indian public officials capable of rising to offices of great trust. This is instanced by the fact that two members of the council of the secretary of state for India, one member of the governor general's executive council, or cabinet, and many of the judges of the highest courts in the country are Indians.

III

At the present juncture, in view of the highly charged atmosphere of filial devotion and fraternal good will within the empire, it appears cynical if not downright sacrilegious to subject to analysis the loyalty of the British dominions. To impute any other basis for this sentiment than that of pure patriotism doubtless will be deemed the grossest materialism. It may appear to some to be emphasizing unduly the economic bases of human action and thus to be placing empire loyalty on an uncertain foundation.

On the contrary, however, an allegiance which is founded in part on natural race ties and in part upon legitimate self-interest is doubly buttressed. In a letter, in 1891, to Sir John Macdonald, then premier of Canada, Cecil Rhodes touched upon this issue. "The whole thing lies in the question," Rhodes maintained, "as to whether we can invent some tie with our mother country which will prevent separation. It must be a practical one, for future generations will not be born in England." In the same vein, Prof. W. J. Ashley, of the University of Birmingham, has professed a belief that the empire will eventually "break up unless some material means can be devised to make the colonials feel a common interest with us." Allusion must also be made to a speech delivered at Glasgow, Scotland, in October, 1903, by Joseph Chamberlain. Discussing the problems of imperialism, he referred to the dominions as "sister states, able to treat with us [in Great Britain] from an equal position, able to hold to us, willing to hold to us, but also able to break with us." In alluding to the statesmen of the colonies Mr. Chamberlain asserted that there were none who were not loyal to the idea of imperial partnership, an idea which they wished England might adopt more completely, while at the same time he had found none who believed that the then existent colonial relations could be permanent. "We must either draw closer together," he declared sententiously, "or we shall drift apart."

That the autonomous units of the empire have been drawing closer together, during the twelve years which have elapsed since

Mr. Chamberlain's pronouncement, there is considerable circumstantial evidence. The policy of granting preferential tariff rates to Great Britain, adopted by Canada in 1897, has become general within the empire. The development of the colonial conference plan, during the past decade, bears witness to a desire to place empire relationships upon an equitable and permanent basis. And the spirit of the dominions, subjected since August 1914 to a practical test, has manifested itself in an instant submersion of party politics in imperial sentiment.

Significant evidence, that Cecil Rhodes' wish for a material tie between England and the dominions is apparently nearing realization, lies in the loyal allegiance of such regions as French Canada and Dutch South Africa. Race affinity obviously is not an element in the attitude of the Boer and the French Canadian toward England. In a message to the *Cape Times*, May 31, 1910, General Botha expressed the hope that United South Africa would become "a peaceful, progressive portion of the empire." Who in 1899 could possibly have dreamed of a constitution to which would be appended side by side, the names of General Botha, Dr. Jameson (now a baronet), General Smuts, Sir Percy Fitzpatrick, and others who were leaders of the opposing forces during the Boer War? The sudden collapse of the recent insurrection in South Africa is to be attributed primarily to the genius of Botha. It will be recalled that in the naval crisis of 1912, brought about by the question as to whether South Africa should stand with her sister dominions in support of the mother country, General Botha resigned the premiership. He explained his act on the ground that loyalty to the empire was incompatible with continued coöperation with a separatist Afrikaner like General Herzog. It was almost unbelievable that the Boer generalissimo of 1902 should lay his head on the political block for the British navy in 1912. His return to power was a triumph for the imperial ideal and the spectacle is now presented of Briton and Boer acting together in pursuit of a common end.

In the somewhat grandiloquent phrase of Sir Etienne Pascal Taché the prevailing attitude of the French-Canadian is revealed.

"The last shot fired on American soil," he affirmed, "in defense of the British flag would be fired by a French-Canadian." Sir Wilfrid Laurier, the venerable ex-premier, has declared that "whilst remaining French, we are profoundly attached to British institutions." The position of the church, the strongest factor in French Canada, has been carefully analyzed by André Siegfried in his volume *The Race Question in Canada*. "The church has unequivocally taken its stand," says Mr. Siegfried, "on the principle of a 'complete and final acceptance of British rule' while at the same time insisting on 'the passionate defense of the integrity of the French-Canadian race.'" The church has a genuine and openly expressed regard for British sovereignty. "British rule suits us perfectly," a French ecclesiastic of high rank has averred. "Thanks to it, the position of our church in Canada is excellent."

Herein lies a suggestion as to the nature of the magic device whereby Britain has kindled among diverse population elements a spirit of loyalty. By her strict observance of the provisions of the Quebec act of 1774, England has established permanently the civil, political, and religious rights of the French in Canada. It is probably true that the Catholic Church in French Canada is more strongly entrenched and in enjoyment of greater privileges than in any other country save Italy.

Similarly, the devotion of the Dutch element in South Africa is founded on the exercise of unusual rights. Despite the dismal forebodings of the opposition party the British government granted the privilege of responsible government to the Transvaal and the Orange River Colony in 1906 and 1907 respectively, less than five years after the Boer leaders had accepted the terms of the treaty of Vereeniging. By this daring and astute stroke of statesmanship Britain made possible the birth of the youngest of the daughter states. It is evident therefore that the loyalty of the dominions is not based on racial bonds alone. Material ties have been evolved during the twenty-four years since Cecil Rhodes deplored the absence of such. At the risk of offending the supersensitive soul it may be urged that these ties are the embodiment of the prosaic factor of self-interest. The present

lot of the dominions is such as to produce feelings akin to self-exaltation. And equally true is it that the severance of the bond with England would entail great material disadvantage, while yielding few powers not already enjoyed. The dominions now exercise the essential rights of practical sovereignty. They enjoy practically, although not theoretically, legislative and administrative independence. As already mentioned, this virtual independence has been acknowledged by the British government. In the course of an address, delivered on October 27, 1910, before the University of Birmingham, the Hon. Alfred Lyttleton, late secretary of state for the colonies, asserted that "there is now a practical equality of status as between the parent country and the dominions."

The significance of this unique relationship it is difficult to grasp. Even yet it is not uncommon to meet an incredulous one who insists that the rights of self-government enjoyed by the dominions pertain only to the more unessential details of administration and that in the larger affairs of fundamental import the British government still retains the balance of power.

That the gift of autonomy granted by England to her "partner states" has no string attached to it may be made clear, however, by calling attention briefly to no more than two recent issues. The problem of immigration within the empire, and the naval controversy as waged within the dominions since 1909 abundantly illustrate the impotency of the British government to alter by direct means colonial legislation not pleasing to the home authorities.

IV

Of the diverse empire problems which Britain is called upon to solve none is more perplexing and provocative of disaster than the adjustment of relations between certain races within this "congeries of nations." The Indian immigration crises in South Africa and Canada have fanned into flame a problem which for long has been smouldering. "The conflagration thus started, if left unchecked, threatens to eat its way to the very vitals of Indo-British relations," Saint Nihal Singh admits, "and it may

prove to be much more dangerous than any other contention that has arisen since the dread Sepoy mutiny of 1857."

Specifically the grievance grows out of the ill-treatment meted out to Indian immigrants in the British dominions. This in turn is but a phase of the larger issue of Asiatic immigration. Although in full appreciation of Asiatic virtues the various dominions—Canada, Australia, New Zealand, and South Africa—have fully determined to restrict if not virtually to exclude immigration of Asiatics. This decision is alleged to be based on the principle of economic self-preservation and not on prejudice against color or religion. The exclusion of the Chinese and Japanese is not attended by any unusual difficulty. To be sure, by reason of England's alliance of 1905 with Japan a certain delicacy was attached to the negotiations between Canada and Japan which culminated in the immigration treaty of 1907.

What renders the issue of Indian immigration peculiarly perplexing however is the fact that the East Indian, as much a British citizen as the Australian or Canadian, keenly resents being refused freedom of residence in portions of an empire of which he himself is a member. The Indian moreover is able to point with pride to his honorable record on many battlefields in support of the British flag.

For the purpose of the present study a brief summary of conditions will suffice. Whereas the various dominions have for years restricted Indian immigration, certain recent measures of a drastic nature on the part of Canada and South Africa have precipitated a crisis. Actuated by the common determination to maintain their land "a white man's country" the Canadian authorities denied to a group of Hindu would-be immigrants the right to disembark from their craft.

By reason of the relatively large number of East Indians already domiciled in South Africa, the problem in that colony is correspondingly grave. Whereas South African employers were eager as early as 1859 to import laborers from India under the indenture system, it was intended that the latter should return to India at the expiration of their term of service. Many however, for various reasons, remained in the country and engaged

in such occupations as gardening and retail business, with the result that the present Indian population is estimated to be 160,000. To stem this current the colony adopted a restrictive policy designed to make their life intolerable. Chief among the hardships imposed upon the Indians are: the poll tax of £3 per annum on each Indian who remains in the country after his indenture, a tax to be levied as well on his wife and children (over a specified age); and openly questioning the legality of marriage contracted according to Hindu, Moslem, Sikh, and other non-Christian rites, and the legitimacy of children born in such wedlock.

Unfortunately for the peace of mind of England this is not a local issue capable of settlement by purely local legislation. Rather is it an imperial question of the widest dimensions. The British authorities are placed in an extraordinarily difficult position. On the one hand they must face the fact that South Africa, Canada, and Australasia, practically autonomous states, steadfastly insist on exercising their cherished rights of self-government. On the other hand, the imperial government cannot ignore the growing volume of protest from India against colonial oppression. The viceroy of India, Lord Hardinge, moved to action by public meetings at Bombay, Delhi, and other cities in India demanded of the British authorities a thorough and impartial investigation of the situation. He added, that in case the Indians' charges were sustained an emphatic protest would be lodged against "the inhuman treatment of a loyal section of his majesty's subjects." At the same time, General Botha, the premier of the Union of South Africa, informed the authorities that the Union while endeavoring to safeguard its own future was seeking at the same time, so far as was possible, to serve the interests of the empire as a whole. Any direct interference with South Africa in her course of action by the British authorities would probably precipitate a break in the present relations. Indeed no less an authority than the Hon. Lewis Harcourt, secretary for the colonies, referred to this very contingency in the course of a debate on the South African situation, in the House of Commons. In substance, he declared that they could readily

smash the British empire in a day's debate in Parliament if they attempted to interfere with the autonomy which had been granted to its various parts. Happily however this does not preclude the exercise by England of a policy of moral pressure.

The gravity of England's dilemma is obvious. The uneducated Indians look upon the British sovereign as their all-powerful protector. Knowing nothing of constitutions and self-government and believing in the divine right of kings they have turned to Britain for help. If now they become disillusioned, if they find that the British authorities cannot shield their kindred from colonial harassment, a situation of alarming proportions may readily arise. With this essential fact clearly perceived by the dominions, it cannot be doubted that a spirit of moderation and reason will mark future action.

V

Not less eloquently does the naval controversy bear witness to the genuineness of the powers of self-government exercised by these autonomous states. Their freedom from compulsion is instanced by their varying reactions to the "naval crisis" which arose in 1909. Early in that year, as a result of Britain's anxiety over her threatened naval supremacy, New Zealand's loyalty expressed itself in an offer, to the mother country, of funds to cover in full the construction of a *dreadnought*. In Australia, despite the original agitation that the Commonwealth follow the example of New Zealand, the decision was reached to establish an Australian squadron. The first units of this fleet were to be built in Great Britain. South Africa, then undergoing the transition from the colonial status to dominionhood, did not depart from the policy of making voluntary naval cash contributions to Great Britain, a plan followed for years by Cape Colony and Natal. The policy adopted by the Laurier administration, in Canada, was distinctly nationalistic. The proposed navy was to be built in Canada and manned and wholly controlled by the dominion.

At no time has Canada contributed directly towards the support of the British navy in which respect it occupies a unique

position. On the other hand, the voluntary contributions of the other dominions were clearly increased as a result of the colonial conference of 1902. At this conference, the Canadian premier, Sir Wilfrid Laurier, courteously but absolutely refused to accept the principle of direct contributions to the British, or an imperial, navy on the grounds that it would "drag the dominion into the whirlpool of militarism, that plague of Europe." This unwillingness to offer cash subsidies in behalf of empire defense was not based upon a lack of loyalty, as abundantly evinced since 1914. It was urged that by the development of their individual defense resources the dominions would in the long run best serve the interests of the empire as a whole. As a critical analysis of this view is not germane to the study in hand, it will not be attempted. In the formulation of his naval policy Sir Wilfrid always insisted unequivocally for the greatest measure of autonomy consistent with the maintenance of the British bond. Conceiving that form of imperial defense coöperation most in conformity with the dignity of the self-governing states to be the development of their individual resources, such a plan accordingly was adopted by Canada and Australia. To be sure the Conservatives under Sir Robert Borden appear to favor the "emergency" contribution plan, pending the determination of a permanent policy through submission of the question to the Canadian electorate.

Notwithstanding the frank recommendations of the British admiralty, in the past, that the contribution plan be followed by all the states the opinion may be ventured that the separate navy plan is destined to carry the day. Indeed steps already have been taken by New Zealand which suggest a reversal of policy preparatory to following the example of Australia. The prevailing view would seem to be that the Australian navy has justified its existence by the events which culminated in the destruction of the *Emden* by the Australian cruiser *Sydney*. Future action will not be uninfluenced by this event. Even from utterances of Sir Robert Borden evidence may be drawn that the naval policies of the dominions will be determined in the end not by the admiralty but by the colonial authorities. "Canada,"

said Sir Robert, "means to have a voice in matters of imperial foreign policy. Canada will not be an 'adjunct' even of the British empire, but we have no desire to force the pace unduly—we know that we must creep before we walk."

VI

All this being so the question inevitably arises as to whither the British empire is drifting and as to what its future is to be. The ancient epigram that the empire is a huge accident "created in a fit of absent-mindedness" has not lost its pertinency with the passing of time. Without set design or intention, changes have taken place so gradually as to be almost unnoticed until fully established. The resultant situation introduced by "the unconscious convergence of many thoughts and wills in successive generations" is one which calls for conscious action. Notwithstanding the success attending the haphazard process of expansion in the past its continuance cannot be advocated with reason. The policy of *laissez-faire* is not invariably successful in the political, any more than in the economic, sphere.

Within recent years events have conspired to render progressively popular a policy of imperialism meaning thereby closer union of the empire in any form. Several decades ago imperialists within the British empire, few in number, were looked upon as visionaries. The transition in political thought has been so complete however that at present "the anti-imperialists have practically ceased to count," declares Richard Jebb, "whether in England or the dominions." There are few within the empire who would subscribe to the wish voiced in 1863 by Goldwin Smith that "the waste, peril, and humiliation" incident to the maintenance of England's dominions be terminated by "the simple and obvious solution of political separation." Much water has run under the bridge since the Imperial Federation League was formed in the eighties, with Lord Roseberry as its leading spirit, for the purpose of doing something, however vague that something was, which would secure the coherence and the constitutional *rapprochement* of the motherland and dominions.

There is abundant evidence of the reality of an underlying desire to be one. Eloquent testimony of the strength of such a wish is presented in such events as the gratuitous extension by the dominions of tariff concessions to Britain, the sending of colonial contingents to South Africa at the time of the Boer War, the establishment of an imperial penny postage and an empire cable service, empire coöperation with the Allies in the great European struggle, and the calling of colonial statesmen to imperial council boards.

It may be taken for granted then that the aim of the imperialist is generally accepted by all parties in Britain as well as in the dominions. This situation discloses the progress that has been achieved by the movement for closer union. The end no longer being the controverted point, public opinion today is divided as to the means for attaining it.

Of the two solutions proposed imperial federation has the advantage of priority and in the number of adherents. The ideal of a Britannic alliance, too recent to have attained an impressive following, is deemed by its advocates however to be more in harmony with sentiment current in the empire.

In the scheme of federation the empire is conceived as an organic whole consisting of nations independent in local affairs and having distinct individualities, but by reason of underlying common interests developing a common imperial policy. Those matters pertaining to the empire at large, such as defense, commerce, and immigration would be subject to an imperial management in peace as well as in war. This would involve the creation of a federal parliament, comprised of representatives of Great Britain and the dominions, with an executive responsible to it. After twenty years of intellectual effort, however, the scheme still remains ill-defined.

Among the difficulties lying in the path of the federationist a few may be noted. As yet no proposal has been advanced for apportioning representation in the federal parliament or council which has met the approval of the dominions. Again, this legislative body attempting to debate empire immigration or foreign policy would find itself involved at every turn in matters which

because of their local character would be beyond its jurisdiction. Most serious however is the consideration that although security may be attained through federation it is gained only at a sacrifice of liberty. The scope it allows to individuality is provincial rather than national. The measure of state autonomy which federation permits is far short of national independence. Imperial federation would probably carry with it for a period at least British ascendancy owing to the inevitable preponderance of Britain in a federal parliament. Apart from the fear of ascendancy however, which possibly is only an imaginary danger, the dominion federalists have met a reluctance on the part of their people to surrender any part of the national autonomy now enjoyed.

At a meeting of the British Empire League in Toronto, in May, 1901, the premier of Ontario discussed this question. "In a federated parliament of the British empire, Canada would be subjected," he declared, "to the decisions of the representatives of all parts of the empire—of men, that is to say, who have no knowledge of our social conditions or of our national aspirations." In the opinion of Mr. Asselin, the French-Canadian nationalist, "the idea of an imperial parliament legislating, even on some subjects only, for all the British realms, may appeal to the imagination, but no one as yet has shown how such legislation could be passed without the bigger and more powerful partners overriding the will, now of this, now of that colony."

Although the attitude of the dominions has been characterized as one of narrow pride in nationality rather than one of large-souled allegiance to the empire, the fact continues to stand forth stubbornly that the spirit of colonial nationalism cannot be ignored.

The conception of Britannic alliance, on the other hand, rests, in the opinion of Mr. Jebb, on "the theory that in democratic communities the integrating force which tends to make them organic is not the compulsive power of a central government but the conscious sense of mutual aid." It is urged that the growing unification of economic interests is tending automatically to bring into being an expanding and permanent basis for empire

coöperation. Thus would disappear the necessity of any "over-riding" imperial authority. Under this scheme there would be no call for any dramatic act of constitution-making, bringing in its wake a new imperial government. It would involve the process of *deliberately* continuing developments already well begun, supplemented by a further elaboration of the imperial conference to serve as a central organization. No less an imperialist than Lord Milner himself has outlined his ultimate ideal for the empire as "a union in which the several states, each entirely independent in its separate affairs, should all coöperate for common purposes on the basis of absolute unqualified equality of status."

To illustrate the underlying contrast between the two imperialistic policies, in question, allusion may be ventured to a hypothetical situation pictured by Mr. Jebb. We are asked to assume that Great Britain has resolved to enforce its treaty rights with China to compel the latter to continue to receive Indian opium so long as any opium is being produced in China itself. The procedure that normally would ensue under the operation of the Britannic alliance plan may first be outlined. In this scheme as already implied there would be no federal parliament. The British foreign secretary, who, by hypothesis, having made up his mind that China must be coerced, requests the Canadian and Australasian ministers to confer at once with him with a view to assembling the several units of the Pacific fleet in Chinese waters. The naval units of the Pacific, in the alliance scheme, would naturally constitute a part of the fleets of Canada, Australia, and New Zealand. The British secretary having pointed out the "emergency" would request the dominion ministers to cable their respective governments for the requisite orders in council, to make possible immediate action. "These ministers, however, would unanimously refuse," says Mr. Jebb, "to recommend the mobilization of the Pacific fleet for a purpose so repugnant to the national instincts of their people." Some other policy must be found, they insist. According to the federalists this would precipitate the much-feared end, the disruption of the empire, which they have insisted would be the ultimate conse-

quence of the "separate navy" policy. Autonomists, however, the advocates of the alliance plan, fall back on a larger faith.

Under imperial federation the policy to be followed in meeting the assumed emergency would be determined in the federal parliament. Notwithstanding the opposition of the dominion representatives to the proposed exploitation of China the majority vote of the parliament would carry the day. On their return to their respective countries the dominion statesmen would attempt to soothe popular indignation by explaining that individual conviction must be sacrificed in behalf of "imperial interests." Such a contingency giving rise to a genuine dissatisfaction in the dominions over their empire status might the more swiftly hasten the very end which the federalist would avert.

Probably the most impressive charge against the principle of Britannic alliance is that technically it is inferior to centralization; theoretically yielding less naval strength, for example, for the same expenditure of money and rendering less certain the availability of all the fleet units in a moment of emergency. On the other hand, however, national patriotism as compared with imperial compulsion may properly be deemed a superior factor of efficiency. An empire which is to have any reality "cannot be maintained by pressure from the center on the circumference" but must exist and flourish by the spontaneous desire of the component parts to remain in a definite relation to the parent state by accepting the implied obligations. In brief this expresses the creed of the believer in Britannic alliance. He would add that if the dominions are to remain indefinitely in the empire it must be because none of them would have occasion to wish to leave it. This proposal possesses the additional advantage over imperial federation of being essentially in accord with recent developments within the empire.

THE CONGRESSIONAL CAUCUS OF TODAY

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The convening of the 64th congress makes timely a brief discussion of the organization and operation of the Democratic caucus system in the house of representatives during the last two congresses; since the Democratic party remains in control of the present congress, it is to be presumed that the past caucus system will be continued in substantially the same form.

The caucus system used in the 62d and 63d congresses was adopted by the Democrats, upon their accession to control of the house in 1910, to replace Cannonism, which had become of ill repute among the voters, and which had been partly overthrown at the preceding session. The unwieldy size of the house, as well as the exigencies of party, required some extra-legal machinery to coördinate and direct the action of the members; the substitute chosen by the Democratic leaders was an adaptation of the senate caucus, formerly known as Aldrichism. The essence of Cannonism had been the control of the house by the speaker through his power of appointment of committees and his domination of the rules committee, backed by the power of the majority party caucus; the essence of the new system is direct control of legislative action by the caucus itself.

As at present constituted, the Democratic caucus is composed of all members of the majority party in the house. For the election of caucus officers and for the nomination of candidates for house officers, a majority of those voting binds the entire caucus; on questions of policy Rule 7 of the Democratic caucus rules reads:

"In deciding upon action in the house involving party policy or principle, a two-thirds vote of those present and voting at a caucus meeting shall bind all members of the caucus; provided,

the said two-thirds vote is a majority of the full Democratic membership of the house, and provided further, that no member shall be bound upon questions involving a construction of the Constitution of the United States or upon which he made contrary pledges to his constituents prior to his election or received contrary instructions by resolutions or platform from his nominating authority."¹

If a member decides not to be bound by the caucus on any question, he must notify the caucus in advance.

According to what has become the custom, shortly after the congressional elections those members of the congress then in existence who have been reëlected convene in a caucus; elect the caucus chairman, the party candidate for speaker, and the party floorleader for the coming session; and appoint the Democratic members of the ways and means committee a committee on committees to arrange all Democratic committee-assignments. In this action the newly elected members of course have no part, since their congress does not meet until nearly a year later; the caucus positions are thus easily dictated by the old leaders who have been reëlected. The caucus meets once more, a few days before the opening of the new congress, to consider the other side of caucus organization—the distribution of patronage among its members,—to appoint a representative to confer with a Republican representative on the committee-assignments of the minority party, and probably also to define the legislative program for the session.² The caucus is then ready for business.

Among the actual instruments which the caucus uses to control the legislative action of the house the basis is of course the

¹ *Lawmaking in America*, by Lynn Haines, p. 10.

² E.g. The resolution offered by Underwood of Alabama, floorleader: "Resolved, That the Democratic members of the various committees of the house are directed not to report to the house during the first session of the 62d congress, unless hereafter directed by this caucus, any legislation except with reference to the following matters." (*Caucus Journal*, April 1, 1911.)

N.B. It is interesting to note that the average attendance at the caucus of the 63d congress for consideration of important matters was 65 per cent of the membership of the caucus; that therefore 132 votes (out of 291 members) was the normal two-thirds majority for controlling party policies; and that 16 southern states had exactly 132 representatives.

"binding resolution," through which a majority of two-thirds of those voting at the caucus binds the whole body of Democrats (except for Rule 7), and they in turn control the entire house.³

The control of the open voting of the house is however less important than the determination of what legislative material shall come before the house at all, for its consideration. The caucus controls the subjects upon which the house may legislate, in the first place, by controlling the house committees, and it controls the committees by controlling the selection of the majority members of the committees. As a matter of practice, the Democratic committee-assignments are really determined by a few leaders; since 1911 the nominations by the committee on committees have never been rejected by the caucus. This power of selection of the Democratic committee-majorities is of importance, first, because the majority members of committees may hold a miniature caucus in which a conclusion is reached which all are bound to support in the open committee; thus the minority members of the committee, when they are finally called in, find a completed bill which they have the high privilege of supporting or opposing as it stands. In the second place, the power of assigning members to committees is important to the leaders because the reports of committees (or of the majority membership of committees) exercise a considerable influence, even a control, over the caucus itself; "a careful study of the caucus records shows that with not a single important exception, the caucus ratified the action of a majority part of the standing committee which had the bill in charge."⁴ And finally, the power of selecting committees is important: first, because the committees cannot in fact be compelled to report by the house and thus they apparently decide what matters the house shall be allowed to consider; and second, because, whenever a com-

³ E.g., Resolution by Underwood (amended): "Be it resolved, by the Democratic caucus that we indorse the bill presented by the ways and means committee and pledge ourselves to support said bills in the house with our votes, and to vote against all amendments, except formal committee amendments, to said bills and motions to recommit, changing their text from the language agreed upon in this caucus." (*Caucus Journal*, April 11, 1911.)

⁴ National Voters' League, Bulletin No. 1.

mittee does report a bill, the chairman of the committee has charge of the bill in the house and apportions the allotted time for debate among his party.

As a matter of fact, however, the action of the committees in the house is often controlled by the caucus itself, in one of three ways. First, bills are often introduced in the caucus, worked out there, afterwards introduced into the house; their reference to a committee is then a mere formality. Second, the caucus may adopt a resolution forbidding reports on other than specified subjects, or by other than specified committees, without its express consent. And third, the house procedure is intentionally so inefficient that a special rule issued by the rules committee, under instructions from the caucus, is necessary to secure consideration for any bill not reported by one of the three privileged committees.

This brings up the subject of the house procedure. Briefly, the house rules have been so adapted and arranged that the house cannot compel its committees to report, and yet, if they do report, it is next to impossible for any bill to reach final consideration under the ordinary rules. Out of this chaotic situation there rise three privileged committees—those on rules, on ways and means, and on appropriations—which have the right to report at any time. This gives the chairmen of the latter two committees overwhelming influence on all financial matters; the scope of the power of the rules committee is still broader. In fact it is to his position as chairman of the ways and means committee that the majority floorleader owes his control in the house, for, as chairman, he has the right to recognition at any time and thus, by a motion, he may improvise a special rule to restrict debate or to shut off amendments. His power in the house is of course backed up by his domination of the caucus, in which his all-pervasive influence appears on every page of the proceedings. His personal ascendancy over the members comes largely from his control of committee-assignments as chairman of the ways and means committee and therefore of the caucus committee on committees.

The source of the power of the rules committee, of only ten

men, is the absolutely unworkable system of house rules, which, on the one hand, makes it impossible for the house to compel its rules committee (or any other) to report, and which, on the other hand, makes the house dependent on the rules committee, since it is impossible for business to be transacted effectively by the house except under a special rule from the rules committee. This committee also controls all special investigations, for to it practically all resolutions constituting special committees are referred. And, further, it is the only agency able to compel a house committee to report.

The general control of the legislative activity of the house by the rules committee is exerted through three kinds of motions, as well outlined by Mr. Lynn Haines.⁵ First are gag-rules, which introduce a bill, at the same time limiting debate and giving control of that time to the respective leaders of the committee which had the bill in charge. A second method of control is by special rule permitting the incorporation of alien subject-matter in appropriation bills. The third variety of motion, the "buffer," is used as a means of negative control, to postpone out of existence some politically dangerous bill (inadvertently allowed to approach a vote) by a special rule putting other bills ahead of it on a special calendar. Thus it is seen that the rules committee has "the power to advance directly, or to retard indirectly, any measure;"⁶ it is the steering committee of the house. But it itself is completely subject to the direction of the caucus; it is rather a most essential instrument of caucus control of legislation, than a controlling force in itself.

It is in connection with the domination of the floorleader over the members of the caucus by virtue of his control of committee-assignments that we first strike the foundations of the caucus system; for, as Mr. Lynn Haines acutely observes, "the belief that the caucus can bind reluctant members to unanimity . . . is false. The action of a caucus binds only those members who were bound by the 'organization' before the caucus acted."⁷

⁵ *Lawmaking in America*, pp. 22-26.

⁶ *Lawmaking in America*, p. 27.

⁷ *Legislating with a Dark Lantern* (article), by Lynn Haines.

This strikes the nail on the head: once the leaders agreed, they overawe the other members into submission by their supposed control over the three necessities of congressional existence—perquisites, patronage, and “pork.” The fame or influence of positions on important house committees attract some, but chairmanships carry more substantial perquisites in the use of the committee-clerk, which allows the chairman to save the \$1500 clerk-allowance which each representative receives. In the second place, the amount of patronage which each congressman is allowed to distribute depends upon his party-regularity, his submission to the caucus; also, committee chairmen are given the appointment, with the consent of their committees, of the committee-employees. And thirdly, to receive his share of the “pork”-appropriations for his district, a member must be “regular.” It is these things that make being “read out of the party” a serious matter; “pork” and patronage are essential to reelection, and party-obedience is their price. The ordinary congressman is tied hand and foot. The problem of caucus-reform is therefore the substitution of some other motive for submission to the caucus—unless we are to denounce the whole caucus-idea, and to do that is to attack our system of party-government.

Back of any criticism of the present caucus-system as such (and aside from particular defects), lies one of two opposing theories. There are those who maintain that in our national legislature we should have a system of individual responsibility, under which all bills would pass or be defeated by ever-shifting majorities, but the individual units composing these majorities would be responsible each for his own acts to the people of his own district. If each representative is to be held responsible as an individual for his acts, the acts must result from his free and independent will, controlled only by his conscience and his reason.

Yet all democratic governments seem to develop inevitably upon the theory of party-responsibility; if coöperation is found to be more effective in politics as well as in other walks of life, men cannot be kept from coöperation. In the United States, just as the occasion of the rise of party organizations was the

lack of adequate nominating instruments, so the lack of any coördinating instrument in the midst of the chaos of congressional committees produced Cannonism, which was backed by the caucus, and has now produced the caucus as itself the supreme instrument. Woodrow Wilson, in his early book on *Congressional Government*, pointed out that "the caucus is meant as an antidote to the committees. It is designed to supply the cohesive principle which the multiplicity and mutual independence of the committees so powerfully tend to destroy."⁸ He states the essence of the theory: "It should be desired that parties should act in distinct organizations, in accordance with avowed principles, under easily recognized leaders, in order that the voters might be able to declare by their ballots, not only their condemnation of any past policy . . . but also and particularly their will as to the future administration of the government."⁹ He even goes so far as to advocate unipartisan membership on house committees; the need for this has been met to some extent by committee caucuses.

Passing over the theoretical criticisms of the caucus and accepting, as we must, our party-system of government, we may turn to the problem of practical reform. It has been observed with penetration that reform of the caucus must come through reform of the house; that, if the house is once organized in a businesslike way, many of the evils of the caucus will disappear with the opportunities for its arbitrary control of legislative action; what may be called its legitimate majority-control will then remain. A brief mention of the reforms needed in the house will sufficiently indicate their effect upon the caucus.

1. The house rules must be entirely reconstructed; at present the necessity of special rules "means not only that disorder, rather than order, is the accepted parliamentary situation, but also that whatever the house does 'constructively' is always in the hands of a few leaders,"¹⁰ e.g., the rules committee. The opening wedge should be a "gateway amendment" to the rules,

⁸ *Congressional Government*, by Woodrow Wilson, p. 326.

⁹ *Ibid.*, p. 98.

¹⁰ National Voters' League, Bulletin No. 5.

requiring the rules committee to report within a certain time any proposed amendment to the rules which may be referred to it; with the present independent position of the rules committee the old rules are rushed through at the beginning of a new congress, before the new and inexperienced members understand the rules' importance—after that they are helpless.

2. The entire house committee-system must be reformed: the dead, unused committees should be abolished; the committees should select their own chairmen, and employ and use their own employees. These two changes would strike at the root of the irresponsible control by the leaders, by eliminating their control of perquisites and of much of the patronage; the extension of civil service reform to all federal officers possible would do away with most of the rest of the patronage. Committees should also be required to report all bills referred to them, within a specified time.

3. Further, much of the congestion of business of the house could be eliminated by requiring the introduction of all routine business early in the session, by giving the District of Columbia self-government (its business now takes up one-thirteenth of the whole session), and by establishing a scientific budget-system. This last reform would not only save time and money, but it would largely wipe out the "pork" system of appropriations upon which the present caucus rests.

4. If an electrical voting-system were installed in the house, there would be no non-political reason why roll-calls should not be taken on all votes, in the committee of the whole as well as in the house. A chief reason for the superiority of the senate over the house is that roll-calls cannot easily be avoided.

5. Another reason for the senate's superiority is that its small size allows it to remain a deliberative body; the membership of the house should be reduced to a workable basis.

6. A fundamental and most valuable reform is the substitution of election of representatives in groups from a few large districts in each State, in place of election by single districts; with this should be combined some system of proportional representation. Such a plan would greatly weaken the power of

the leaders of the caucus to control the caucus by distribution of local patronage and "pork" appropriations; it seems in fact desirable in every way, if not absolutely essential to the establishment of the caucus on a legitimate basis, in spite of the probability that no one party would have a majority in the house, and the resultant dangers of a multiplicity of parties. Some of the less exact systems of proportional representation have the advantage that the rougher apportionment of seats excludes all but the really strong parties from representation; thus the number of parties in the house would be kept reasonably few.

These reforms of the house itself will go far toward reforming the caucus, by making more discussion possible in the house, by giving the house as a whole control over its own instruments, the committees, and its own business, and by destroying to a great degree the corrupting means by which caucus control is enforced; it will tend to introduce a new motive for party-unity. The unity of the caucus will then be due more to a feeling that reelection is to be won by each member through his support of the measures pledged in the party platform, and not by securing patronage or appropriations for his home-district; and the control of the caucus will be exercised in the open on the floor of the house, and not through devious and irresponsible agents such as the rules committee.

The reform of the internal organization of the caucus remains for consideration; and here criticism centers on the question of the open or closed caucus. The present rules provide that the meetings of the caucus shall be secret, but that a journal of the actual proceedings shall be published; roll-calls are not published except on demand of one-fifth of the members present—i.e., at most 58, on the average 40 members.¹¹ This compromise has been criticized on the ground that the publication merely of final decisions, combined with the difficulty of obtaining public roll-calls, leaves the caucus still irresponsible, a shelter behind which members may prostitute their convictions in the dark.

On the other hand, such a degree of secrecy is defended on the ground that full publicity would make impossible the har-

¹¹ Democratic Caucus Rules, Nos. 10, 11 (adopted Jan. 6, 1912).

monizing of party discord which is necessary to party unity, and for which the caucus exists; the frank discussion which may now occur within the bosom of the party would be banished by the light of publicity. We cannot stop our congressmen from meeting, and, so long as their motives, their temptations, will not bear the public eye, they will meet somewhere in secret; we can but drive them farther from the Capitol. Yet—and here is the great difference—if the house organization is reformed as suggested, and most of the opportunities for control of patronage, perquisites, and “pork,” are done away with,—the shady motives and the temptations to corruption will play a much less important part in the control of the caucus over its members. If the caucus once meets and binds its members to unity, because the party-responsibility to the country demands the execution of the party pledges as the price of reelection, if the chances of reelection of the *group* of party members from each large district depends on their support for the enactment of the party-platform into law, instead of the chance of reelection of the *individual* member depending on the amount of government money he can get spent in his small district,—then there will be much less objection to throwing the caucus open to the public. “Publicity is perhaps the most essential characteristic of representative government,” says Guizot. And in fact are not the people entitled to know as far as possible what influences are at work upon their representatives? Publicity is the protection of the honest man. And are not the people entitled to know how their representatives stand on questions of public or party policy? Else, how can they vote intelligently? The position of the representative can best be known through his votes; at present the people cannot tell how their representatives stand, for all important votes in the house are caucus-controlled—it is the votes in the caucus that count. Thus it is that we may say: reform the house and the caucus will take care of itself; without previous reform of the house, all reform of the caucus will be ineffective.

To conclude—from history we learn that means, however imperfect, will inevitably develop to perform certain indispensable unifying functions of government, for which no official provision

has been made. We also see that the tendency of democratic government seems to be toward a system of party-responsibility; the party program is formulated by the national convention and transformed into legislative form by the congressional caucus; the party is collectively responsible. The legislative instrument of the party is represented in its most highly developed form by the Democratic caucus of the 62d and 63d congresses, the operation of which is based on two principles: strict party-unity on questions of essential party-policy; individual liberty in non-essentials.

But we have seen that the congressional caucus has many defects: that its control is placed too much in the hands of a few by the absurd internal organization of the house of representatives, so that it can be deviously and irresponsibly exercised; and that the control of the caucus over its own members rests on a false basis—the corrupting needs of the individual members, which are at present the price of reelection. And we have seen that the fundamental causes of these serious defects extend far beyond the caucus itself and so can only be remedied through the house which supports the caucus.

Once the house is made efficient by remedy of these underlying defects, and once the rotten foundations of the caucus—patronage, perquisites, and “pork”—are destroyed, or, rather, replaced; the sinister, throttling domination of the caucus will largely disappear of itself, and the institution may be left free to develop as a legitimate instrument of majority control and party-responsibility on the open floor of the house.

THE EARLY HISTORY OF THE TRADITION OF THE CONSTITUTION

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In Aristotle's treatise on the constitution of Athens we read of the great lawgiver, Solon, that "when he had completed his organization of the constitution . . . he found himself beset by people coming to him and harassing him concerning his laws, criticizing here and questioning there, till, as he wished neither to alter what he had decided on, nor yet to remain an object of ill-will to everyone by remaining at Athens, he set off on a journey to Egypt, . . . giving out that he would not return for ten years."¹ To the student of American history recalling the comparison with "that old constitution-monger Solon,"² so often flung at the framers of the Constitution by the anti-Federalists, the hasty exodus from Athens for a decade after the attempt "to save the country and establish the best laws that were possible," is full of interest. The actual result of the Solonic experiment in political science we also gather from Aristotle, for "in the fifth year after Solon's government they were unable to elect an archon on account of the dissensions," and again, four years later they elected no archon for the same reason.³

The fathers of this country tried no such experiment in dogmatic and absenteeism government. The framers, emphatically unlike Solon, did not feel that "there was no call (for them) . . . to expound the laws personally, but that everyone should obey them just as they were written."⁴ Just at present

¹ Aristotle on the Athenian Constitution, tr. Kenyon (1912), ch. 11.

² Cf. Jonathan Jackson (Pseud., "A Native of Boston"), *Thoughts on the Political Situation of the United States of America* (Boston, 1788).

³ Aristotle, *Op. cit.*, ch. 13.

⁴ *Ibid.*, ch. 11.

the historians are largely at odds in their appraisal of the framers and their work. But since it is the people's tradition and not the historian's tradition of the Constitution which will occupy our attention, these conflicting views as to the democratic or the reactionary elements, as to the pure political theory or the economic determinism in the Constitution do not concern us here. For the purposes of this paper it is not important to determine whether we must accept the old "inspiration theory" as to the origin of the Constitution, or whether we must regard the framers as merely the shrewd and conscious spokesmen of great consolidated economic groups, or whether, simply taking a rational cognizance of that great synthesis of flesh and spirit in the motive force of human activity, we agree with Bluntschli's remark that "in the great dangers and crises of national life it becomes clear to men that the state is something better and higher than a mutual assurance society."⁵ Here the one significant fact is that the framers, far from leaving the Americans to work out their own salvation under the new Constitution, and far from shunning the defence of their handiwork, were the able exponents and the active propagandists for the Constitution—not merely its authors but also its apostles. They and their Federalist hosts were engaged during the first decade not simply in making constitutional history, but in seeing, or at least in preaching, that national vision without which "the people perish." They, though, as we shall see later, by no means they alone, were busy in the fostering and dissemination of that tradition as to the essentially popular origin and radically democratic, almost *viva voce*, mode of adoption of their own Constitution, which has long since been abandoned by critical historians of all schools, and they were zealously sowing the seeds of a universal affection for the Constitution based upon a profound faith in its wisdom and a semi-mystical belief in its potentialities. "For one reason or another," writes Professor Goodnow, "the people of the United States came soon to regard with an almost superstitious reverence the document into which this

⁵ Bluntschli, *Theory of the State*, 290, quoted by F. B. Vrooman, *The New Politics*, 180.

scheme of government was incorporated, and many considered . . . that scheme . . . to be the last word which can be said as to the proper form of government—a form believed to be suited to all times and conditions.”⁶ Now if “it seems a safe guess to say that not more than five per cent of the population in general, or in round numbers, 160,000 voters, expressed an opinion one way or another on the Constitution . . . and we have 51,000 dissenting voters against ratification,”⁷ then, even though we concede that as a rule delegates to the state ratification conventions “registered the public sentiment in each State on the question of ratifying the federal Constitution,”⁸ it will repay us to give more than a cursory glance at the source of “that spirit of extreme and blind laudation of the Constitution, which, beginning at the adoption of that instrument, lasted so long”⁹ and which held the people enchanted in awesome admiration of “the work of their hands.”

Many writers have remarked with what rapidity the tradition of the popular origin and extraordinary properties of the Constitution grew at the very threshold of genuinely national existence, but practically the only one who has thought this phenomenon worthy of more than passing notice, Von Holst, presents either peevishly or explosively his resentful picture of a gigantic bi-partisan conspiracy to bring about “the canonization of the Constitution.”¹⁰ Our search for the origins of the early popular cult of the Constitution will avoid both dogmatism and choler by a direct examination of the ideas and the actions of the leaders who framed and the people who hallowed and transmitted the tradition. For, as Mr. Oliver, the brilliant though avowedly biased biographer of Hamilton maintains, “If we choose to look we can see the founders of the tradition at work like bees in a

⁶ Goodnow, *The Constitution and Social Progress*, 9-10.

⁷ Beard, *Economic Interpretation of the Constitution of the United States*, 250.

⁸ O. G. Libby, *Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution* (Bulletin of University of Wisconsin, vol. 00), 70.

⁹ Willoughby, *The Supreme Court of the United States* (Johns Hopkins Studies, extra vol. 7), 113.

¹⁰ See Von Holst's chapter on “The Worship of the Constitution and its Real Character,” *Constitutional History of the United States*, vol. 1, ch. II.

glass hive."¹¹ Nor is the task of the would-be historian of a tradition and of a sentiment an easy one, for the growth of a tradition is subtle and elusive and the manifestations of a sentiment are evanescent and may be deceptive. Not merely letters, newspapers, and pamphlets, but even less usually accepted paraphernalia of investigation, such as school books, orations and even sermons have been utilized, so that we may read the times with a "contemporaneous eye." And the span covered has been brief—with few exceptions, only the reign of the Federalist party, that period when nationalism first began to triumph over the sectionalism of thirteen unruly States.

It is conceded by most American historians that "the Federalist party of 1787-88 was not the same as the Federalists of 1791," and that "after the completion of the ratification of the Constitution . . . anti-Federalism (proper) died because its *raison d'être* was gone."¹² The new anti-Federalist party, reconciled to the Constitution as a fact,¹³ now contained those who were determined to give as particularistic as possible a construction and interpretation to that instrument. But this individualism underlying the early "Jeffersonian metapolitics" has often been misconstrued as destructive from the first of respect

¹¹ F. S. Oliver, *Alexander Hamilton, An essay on American union*, 172.

¹² Bassett, *Federalist System (American Nation)*, 42. See also Gordy, *History of Political Parties in the United States* (2d ed., i, 92).

¹³ e.g., "This day (February 8, 1788) . . . the news arrived in this town (Newburyport) that the federal Constitution was yesterday adopted and ratified . . . I have not been pleased with this system, and my acquaintances have long since branded me with the name of an anti-Federalist. But I am now converted though not convinced. I think it is my duty to submit without murmuring against what is not to be helped. In our government, opposition to the acts of the majority of the people is rebellion to all intents and purposes; and I should think a man who would now endeavor to excite commotions against this plan, as no better than an insurgent who took arms last winter against the courts of justice." (Diary of John Quincy Adams [ed. C. F. Adams, Boston, 1903] 94.)

Charles Pinckney to King (June 21, 1788) from Charleston, S. C.: "Most of the members who opposed it have declared that they will exert themselves in its support, and some districts, that were averse to it, are altogether reconciled to its adoption. Indeed, if we were allowed to pass installment and valuation laws as heretofore an anti-Federalist would be a *rara avis* in this State." King, *Life and Corr. of Rufus King*, i, 336; see also, *ibid.*, i, 319-20, 338.

and admiration for the Constitution as a political document. "I have often imagined," writes an ardent exponent of the new nationalism, "a reversal of the work of the two parties. I have tried to think of Jefferson as the first President of the United States. Eight years of this spirit, following the adoption of the Constitution would have made union . . . impossible. The Constitution would not have survived as long as the Articles of Confederation, and these two charters of the American Experiment would have found their way to some historic library in Europe belonging to a nation sufficiently consolidated and sufficiently strong to have preyed upon the struggling and jealous and not too noble peoples of thirteen States. The predictions of Europe would have come true."¹⁴

Now what Mr. Vrooman says of the consequence of a practical application of the Jeffersonian theories to the actual working out of the new constitutional system is probably true, but in the present connection it should be noted that no Federalist leader was more generous in his praises of the Constitution than Jefferson himself. According to Jefferson, not the Constitution, but its interpreters were the source of all evil. Jefferson simply charged the Federalists with a wilful maladjustment and maladministration of the delicate constitutional mechanism, and with none too much delicacy intimated that therein they were greatly aided by the presence in their midst of the overwhelming personality of Washington, with the removal of which the Federal prestige would vanish, the undue importance of the executive department would disappear and the Constitution come into its own for the first time in its hitherto abnormal and inharmonious career. His attitude at ratification is not as obscure as is usually maintained. At the time of the Convention, while he saw "some seeds of danger which might have been kept out of the sight of the framers by a consciousness of their own honesty and a presumption that all succeeding rulers would be as honest as themselves,"¹⁵ and though at first he "wished that when nine States should have accepted the Constitution, so as to ensure us what

¹⁴ F. B. Vrooman, *Op. cit.*, 213.

¹⁵ Jefferson, *Writings* (ed. Ford), iv, 484-5.

is good in it, the other four might hold off till the want of a bill of rights might at least be supplied,"¹⁶ he at length became "convinced that the plan of Massachusetts is the best. That is, to accept and to amend afterwards. . . . *It has therefore my hearty prayers and I wait with anxiety for news of the votes of Maryland, South Carolina and Virginia.*"¹⁷

In June of the very year of the Kentucky Resolutions we have a very definite expression of his insistence on the idea that the Federalists were not simply the enemies of democracy but the foes and distorters of the Constitution itself. He writes to the fiery secessionist John Taylor, disapproving of the latter's suggestion, or supposed suggestion, that in the light of current events, "it was not unwise to estimate the separate mass of Virginia and North Carolina, with a view to their separate existence" in these no uncertain terms:

"The Republicans, through every part of the Union, say, that it was the irresistible influence and popularity of General Washington played off by the cunning of Hamilton, which turned the government over to anti-Republican hands, or turned Republicans chosen by the people into anti-Republicans. He delivered it over to his successor in this State, and very untoward events since, improved with great artifice, have produced in the public mind the impressions we see. But still I repeat it, this is not the natural state. Time alone would bring round an order of things more correspondent to the sentiments of our constituents. . . . Perhaps . . . party division is necessary to induce each to watch and debate to the people the proceedings of the other. But if on a temporary superiority of the one party, the other is to resort to a scission of the Union, no federal government can ever exist. . . . A little patience, and we shall see the reign of witches (i.e., the New England States then in control) pass over, and the people recovering their true sight, restoring their government to its true principles."¹⁸

¹⁶ Ibid., v, 25.

¹⁷ Loc. cit.

¹⁸ Ibid, vii, 263-5, passim.

The alien and sedition laws were to Jefferson "merely an experiment on the American mind to see how far it will bear an avowed violation of the Constitution,"¹⁹ and the Kentucky Resolutions simply a refusal "to surrender the form of government we have chosen."

I have quoted Jefferson at length because his attitude was that which was typical in the first place of the thinking anti-Federalist Republicans, and which, filtering down through the lower strata of his party, gave ultimately to the masses a picture of the Constitution as a charter of liberties torn from them by the crafty Federalists, but capable of recovery and of restoration from an instrument of oppression, tyranny and aristocracy to its pristine vigor as the bulwark of democracy.

That the Federalists and anti-Federalists were thus really only two denominations of the same cult of the Constitution was not left us to point out. As early as 1800 Charles Pettit, himself a staunch Federalist advocate of the Constitution, in a conciliatory pamphlet entitled *An Impartial Review of the Rise and Progress of the Controversy Between the Parties Known by the Names of Federalists and Republicans*, said: "It cannot be necessary to enumerate the various reproachful epithets which each of the parties in their warmth have bestowed on the other; they are numerous, and most of them intended to irritate and provoke; in this respect they have seldom failed of success and are perhaps nearly equally balanced." But, he concludes, "both parties profess an attachment to and a reverence for, the Constitution as their guide, but from the principles and causes I have heretofore suggested, they frequently differ in opinion as to the modes and measures manifesting their attachment and veneration, and reciprocally charge each other with designs to warp, subvert and destroy the Constitution itself."²⁰

Knowing the views of the Constitution of those political "atomists, those professed foes of all political activity, whose leader had felt in writing "on the state of Virginia," that "they should look forward to a time, and that not a distant one, when a cor-

¹⁹ Ibid, vii, 283; see also his letter to Peregrine Fitzhugh, *ibid.*, vii, 210.

²⁰ *Magazine of History with Notes and Queries* (Extra No. 23, 1913), 17.

ruption in this, as in the country from which we derive our origin, will have seized the heads of government and be spread by them through the body of the people; when they will purchase the voices of the people and make them pay the price;"²¹ it will not be difficult to gauge the sentiments concerning the Constitution of those who, with a less gloomy prophecy for the future, proclaimed throughout the land the already-realized blessings of the new Constitution under their leadership and guidance.

But at this point we must digress for a moment to remark the adoption by this constitutional party of a *nom de guerre* the importance of which cannot be over-estimated. It would be hard to conceive of a more deft and sudden abduction of a valuable verbal party asset, a more skilful appropriation of the "enemy's thunder," than that by which somewhere during the years 1787-88, the metamorphosis of the meaning of the word "Federal" in the mouths and under the pens of the Nationalists of America was effected. This is not the place for a detailed study of the process by which a word clearly connoting decentralization, state supremacy and particularism in current politics mysteriously emerged from the Federal Convention as the designation of a party devoted to the idea of consolidation and delocalization. Without fixing the responsibility for this clearly conscious philological ambush into which the American masses fell, its significance may be here noted. This is not stressing too much a mere piece of party nomenclature. Thomas Cooper, the learned South Carolinian nullifier, did not exaggerate the advantage which the Nationalists derived from their daring political manoeuvre, both in the struggle for ratification and after the adoption of the constitution, when he wrote that "the adherents of Colonel Hamilton and the consolidation party gradually assumed the denomination of Federalists, hitherto applied with great propriety to their opponents: and the real 'Federalists' . . . have been at various times since, branded with the appellation of anti-Federalists, Jacobins, Republicans,

²¹ Jefferson, *Op. cit.* iii, 225.

Democrats, and Radicals."²² The Nationalists' annexation of their opponents' lawful and hitherto universally accepted denomination befogged the issue in the minds of those who voted and those who celebrated, for few of the former and far fewer of the latter were prone to spend their days in the casuistries and subtleties of political economists.²³ But what is more, it put the anti-Constitutionalists and thereafter the opponents of the administration on the defensive as disgruntled and dangerous dissenters and agitators. It cast heavily upon the anti-Federalists the burden of proof, of merely the defects of the Constitution, but the defects of its great framers. The stigma of the anti-Federalist of 1787 clung to the anti-Federalist of 1791, even after the latter's more or less graceful acceptance of defeat—the stigma of being an "anti," the weakness of mere negation, the brand of heterodoxy, the mark of political atheism.

Many years later the younger Wolcott accused Jefferson of accompanying his original opposition to the Constitution "with such circumstances of doubt and equivocation, as exempted him from the then unpopular imputations of being an anti-Federalist."²⁴ And what Federalism had come by this time to imply is shown by Judge Hopkinson, who writing to Wolcott from amid

²² "Of the fraternity of politicians thus variously designated by the ingenious manoeuvring of the federal leaders, who well knew the force and value of a nickname, the writer of these pages requests to be considered as a member." (Thomas Cooper, *Declaration of Independence*, An essay on consolidation, 2d ed., Charleston, S. C., 1830 [?], 9).

²³ How violent a wrench was given by the Federalists to the usual and still accepted connotation of "Federal" is strikingly shown in the recent organization in the Union of South Africa of a "Federal League" to combat the centralizing tendencies of the Union, in the scheme of government of which the provinces have been greatly reduced in importance. The four objects of the "Federal League of South Africa" are, according to section 2 of its constitution: (a) To secure by every constitutional means the preservation of such federal principles as exist in the act of union. (b) To enlarge the powers and responsibilities of the provincial councils, and to secure the utmost possible delegation of administrative control to the provinces. (c) To obtain for the respective provinces the largest possible measure of local control over all matters of domestic concern. (d) Generally to secure for the whole of South Africa those features of government and administration which are best exemplified by the federal system." (*Cape Argus*, South Africa, July 11, 1913.)

²⁴ Gibbs, *Administration of Washington and Adams*, i, 121.

the din and clatter of "two or three hundred merchants" in a New York tavern, complains that "the Federal spirit of this city is not worth a farthing. It is entirely unlike that which animates us in Philadelphia, and although as a Philadelphian I am proud of our preeminence, as an American I am mortified and distressed to find the difference. The people here . . . seem plunged in the mire of commercial avarice . . . , they seem to consider themselves as having no kind of connection with the affairs of the nation and no interest in it."²⁵ It is not strange, then, that Noah Webster, who was quite as ready as his more illustrious predecessor to make lexicography the handmaid of politics, defined Federalist in the first edition of his dictionary (1806) as "a friend to the Constitution of the United States."

We now turn to what I venture to call the ritual of the worship of the Constitution, to the various manifestations of the cult in the national life. During the ratification campaign in Connecticut one of the newspapers pithily observed that "the Americans in Europe have been remarked for loving their country and hating their governments."²⁶ It would be supererogatory to dwell on the state of affairs under the Articles of Confederation that provoked this epigram. The orthodox description of it begins with "chaos" and ends with "imbecility." As far back as 1782 Robert Morris had feared that "the want of obligatory and coercive clauses on the States will probably be productive of the most fatal consequences,"²⁷ and Morris' complaints over the hopeless inefficiency of the Articles of Confederation were multiplied and elaborated with much enthusiasm in the struggle over ratification.

"Hear the complaints of our farmers, whose unequal oppressive taxes in every part of the country amount to nearly the rent of their farms. Hear too the complaints of every class of public creditors. See the number of our bankruptcies. Look at the melancholy countenances of our mechanics, who now wan-

²⁵ *Ibid.*, ii, 49.

²⁶ *Conn. Gazette*, October 5, 1787; *Conn. Courant*, October 8, 1787.

²⁷ Wharton, *Dipl. Corr. Amer. Rev.*, v, 327.

der up and down our streets without employment. See our ships rotting in our harbors, or excluded from nearly all the ports in the world. Listen to the insults that are offered to the American name and character in every court of Europe. See order and honor everywhere prostrate in the dust, and religion, with all her attendant train of virtues, about to quit our continent forever. View these things, fellow-citizens, and then say that we do not require a new, a protecting and efficient federal government, if you can."²⁸

The readiness of the people for a change and a celebration is evident. "Our people," writes Sullivan to King, "expect so much happiness from the doings of the Convention that they stand ready to adopt anything which may be offered."²⁹ The feeling in Pennsylvania seems to have been the same. "An old Whig," while attacking the Constitution for the lack of a bill of rights to offset the consolidating tendencies of the instrument, nevertheless finds that

"Experience seems to have convinced everyone, that the Articles of Confederation, under which congress has hitherto attempted to regulate the affairs of the United States, are insufficient for the purposes intended; that we are a ruined people unless some alteration can be effected. The public mind has therefore been raised to the highest pitch of expectation, and the evident need of relief from the many distresses, public and private, in which we are involved, have reduced us to such a state that we can hardly endure disappointment. Scarcely anything that could be proposed by the Convention, in this state of the people's minds, would fail of being eagerly embraced. Like a person in the agonies of a violent disease, who is willing to swallow any medicine that gives the faintest hope of relief, the people stood ready to receive the new Constitution in almost any form in which it could be presented to them."³⁰

The popular rejoicing on the ratification has often been adequately described. The fact that perhaps only five per cent of

²⁸ *Conn. Gazette*, November 9, 1787.

²⁹ King, *Life and Corr. of Rufus King*, i, 259.

³⁰ Reprinted from *Penn. Indep. Gazetteer*, in *Mass. Gazette*, November 27, 1787.

the population of America had voted on the Constitution did not prevent the great majority of the other ninety-five per cent from celebrating what they conceived to be the genesis of a new America. The processions in Philadelphia, Boston, New York, Baltimore, Charleston, and New Haven, symbolizing, as James Wilson told the Philadelphia throngs, "a people free and enlightened, establishing and ratifying a system of government, which they have previously considered, examined and approved," were reproduced in miniature in every Federalist stronghold and there can be little doubt of their impression on the popular mind. "Public processions," said Wilson in his oration, "may be so planned and executed as to join both the properties of nature's rule. They may instruct and improve, while they entertain and please. . . . They may preserve the memory and engrave the importance of great political events. They may represent with peculiar felicity and force the operation and effect of great political truths." The force of Wilson's remark is shown in a letter written by a Philadelphian five days after the procession. "I have forgotten to inform you," he writes, "of two important facts that have occurred since the procession. First, it has been the happy means of uniting all our citizens in the government and second, it has made such an impression on the minds of our young people that "federal" and "union" have now become part of the household words of every family in the city."²¹

"The populace of Boston are regulated by their big men," writes an indignant protestant against the ratification by Massachusetts. "They have had a great fulsome parade at the ratification. The Convention ought to have adjourned from that seat of aristocratical influence. However, all these manoeuvres will not answer; they may serve to please children, but freemen will not so easily be gulled out of their liberties. Supposing they could procure a majority in thirteen conventions, would it be possible to put such a government into execution? . . .

²¹ For all details of the Philadelphia procession, see F. Hopkinson, *An Account of the Grand Federal Procession* (Philadelphia, 1788). The letter quoted is from an appendix to this "Account."

I would not be surprised if the people from Georgia to New Hampshire would rise and crush the real authors and promoters of this system of arbitrary power."²² But instead of a great popular uprising against the new Constitution there came practically contemporaneously, as President Wilson has said, "an indiscriminate and almost blind worship of its principles. . . . The divine right of kings never ran a more prosperous course than did this unquestioned prerogative of the Constitution to receive universal homage."²³ Those who courted the people and those who despised the people joined in praise and prayer for the new Constitution. Franklin, who was no sentimentalist, wrote in one of his last and happiest essays, "A Comparison of the Conduct of the Ancient Jews and of the anti-Federalists,"

"I beg I may not be understood to infer that our general convention was divinely inspired when it formed the Federal Constitution merely because that Constitution has been unreasonably and vehemently opposed; yet I must vow I have so much faith in the general government of the world by Providence, that I can hardly conceive a transaction of such momentous importance to the welfare of millions now existing, and to exist in the posterity of a great nation should be suffered to pass without being in some degree influenced, guided and governed by that omnipotent, omnipresent and beneficial Ruler, in whom all inferior spirits live, and move, and have their being."²⁴

And indeed to countless numbers of thinkers and unthinking alike the new Constitution became fraught with supernal wisdom and endowed with extraordinary intrinsic properties and potentialities. John Quincy Adams records that when the delegates from the Massachusetts ratification convention returned to Newburyport, "the mob huzza'd and one would have thought that every man from the adoption of the Constitution had acquired a sure expectancy of an independent fortune."²⁵ Crusty old Maclay, who had feared that the Constitution would "turn out

²² *Maryland Journal*, March 4, 1788.

²³ Woodrow Wilson, *Congressional Government* (15th ed.), 4.

²⁴ Franklin, *Works* (ed. Bigelow), ix, 439.

²⁵ *Diary of John Quincy Adams*, 94.

the vilest of all traps that was ever set to ensnare the freedom of an unsuspecting people,"³⁶ complained with some justification that "it has been usual with declamatory gentlemen, in their praises of the present government, by way of contrast, to paint the state of the country under the old (Continental) congress, as if neither wood grew nor water ran in America before the happy adoption of the new Constitution."³⁷ One can imagine how Maclay would have squirmed at the rhetoric of Richard Bland Lee, who, after portraying to the house the humiliation abroad, the commercial and financial chaos and the languor of agriculture at home before the adoption of the Constitution, declared:

"Such was the situation of the United States, and to remedy these evils was the Constitution made. Has it not produced the intended effects! . . . I will only mention the stimulus which agriculture has received. In travelling through the various parts of the United States, I find fields, a few years ago, waste and uncultivated, filled with inhabitants and covered with harvests; new habitations reared, contentment in every face, plenty on every board, confidence is restored, and every man is safe under his own vine and his own fig tree, and there is none to make him afraid. To produce this effect was the intention of the Constitution, . . . and it has succeeded."³⁸

In 1808 Josiah Quincy in an eloquent speech in the house on The Suspension of the Embargo warned the country against the attribution of commercial prosperity to so human an institution as the Constitution.

"We are but a young nation. The United States are scarcely yet hardened into the bone of manhood. The whole period of our national existence has been nothing else than a continued series of prosperity. The miseries of the Revolutionary war were but as the pangs of parturition. The experience of that period was of a nature not to be very useful after our nation had acquired an individual form and a manly constitutional charac-

³⁶ Maclay, *Journal of William Maclay* (1890), 75-6.

³⁷ *Ibid*; 411.

³⁸ *Annals of Congress*, 3d Cong., 281-2.

ter. It is to be feared we have grown giddy with good fortune, attributing the greatness of our prosperity to our own wisdom, rather than to a course of events, and a guidance over which we had no influence. It is to be feared that we are now entering that school of adversity, the first blessing of which is to chastise an overweening conceit of ourselves. . . ."³⁹

Quincy's intimation that much of the popularity of the new government was in part really due to a wave of economic improvement that was merely coeval with and by no means wholly due to the constitutional system, had also been made more cynically almost twenty years before, when the new instrument was just going into effect, by Wolcott, who had ample opportunities for a thorough knowledge of both commercial and governmental affairs. "The affairs of this country," he wrote, "are so generally prosperous that *public management must be very bad to render the people very unhappy.*"⁴⁰ And in September of the same year (1790) he confided to his father that "we want men of political experience in congress, and to administer the government, but *when the general affairs of society are so prosperous, it must be a very bad administration which overturns a government.*"⁴¹

Just what were the economic results of the adoption of the Constitution is a question that must be left to the economists, but there can be little doubt that the recognition of the affiliations of the "propertyed" with the Constitutionals was not in the least bashfully made, and that to the people the Constitution was the only guaranty of the safety of their property. A Massachusetts paper of 1787, an ardently Federalist organ, without the slightest diffidence, stated that "one of the first objects of the national government under the new Constitution, it is said, will be to provide funds for the payment of the national debt, and thereby to restore the credit of the United States, which has been so much impaired by the individual States. Every holder of a public security of any kind is, therefore, deeply

³⁹ Benton, *Abridgment of Debates of Congress*, iii, 700, quoted in part in Van Holst, *Op. cit.*, i, 75.

⁴⁰ Gibbs, *Op. cit.*, i, 46.

⁴¹ *Ibid.*, i, 58.

interested in the cordial reception and speedy establishment of a vigorous continental government."⁴² Likewise in the debate in the first congress on the duties on imports, Fisher Ames pointed out that "the present Constitution was dictated by commercial necessity more than any other cause" and urged that "the support of our agriculture, manufactures, navigation and fisheries are objects of very great moment."⁴³

It is natural therefore that the Constitution should have a vital significance in its "critical period" not merely for the "moneyed few" but also for those among the great masses of the people who were not utterly propertyless, and that reverence for it should have become widespread at a very early period. Benjamin Goodhue, writing from Salem in 1795 of the attitude of the "Boston Jacobins" towards the Jay treaty, assures Wolcott that "although they may have received a degree of consolation, from being able to propagate the flame in New York and Philadelphia, yet their mortification must be great at not being able to get either the other great commercial towns in the State, or the agricultural interest to be infected with their mania. . . . You may depend on it that it will not be in the power, either of the inconsiderate or of the determinately vicious, to shake the great body, either of the merchants, or the yeomanry of our country, from their attachment or a reverence for their own government. They feel the sweets of peace."⁴⁴

Fisher Ames' report is more significant. In July, 1795, he had been very despondent over the "inflammatory state" of Boston after the Jay treaty, fearing that "the prejudices and passions of the multitude are scarcely more deadly to public order than the theories of our philosophers."⁴⁵ But in the following summer after a trip from Dedham to Newport he wrote:

"I returned yesterday from a tour to Newport. . . . At Providence, the anti-Federal party is very inconsiderable, and I was happy to see in that State, symptoms of a just pride

⁴² *Mass. Gazette*, September 4, 1787.

⁴³ P. W. Ames, *The speeches of Fisher Ames in Congress* (Boston, 1871), 9, 10.

⁴⁴ Gibbs, *Op. cit.*, i, 221; cf. Chauncey Goodrich's letter, *ibid.*, i, 88.

⁴⁵ *Ibid.*, i, 210.

in their present state, as contrasted with their former turbulence and the folly of Boston. I made conversation at all the country taverns and I think the yeomanry are yet right. They say the men in the government know best what to do. . . . As a speculative question the country folks do not pretend to understand it, their approbation is therefore not given; but their dislike of the proceedings in the seaports, is extorting it. Some opinions are general and well established; admiration of our Constitution and government, exultation in the happy effects manifested in the general prosperity, . . . and a steady resolution to support the government. . . . Now the contest lies between the mobbers and the government. . . ."⁴⁶

But on the other hand it would be manifestly incorrect to ascribe too much of the popular enthusiasm for the Constitution to the mere coincidence of national economic advancement alone. The reverential utterances of Franklin quoted above certainly do not pertain solely to the material welfare of "the posterity of a great nation." There is indeed no more important factor in the creation of the tradition of the Constitution than the very strong belief existing in countless thousands, as in Franklin, that it was the manifest destiny of the American nation to stand under the new Constitution, not merely as the summum bonum of political science but thereby as the herald of a new world-cleansing era that would speedily disperse the "rank vapors of this sin-worn mould." James Wilson told the Pennsylvania Convention that ratified the Constitution that,

"Government, indeed, may yet be considered to be in its infancy; and with all its various modifications, it has hitherto been the result of force, fraud or accident. For after six thousand years since the creation of the world, America now presents the first instance of a people assembled to weigh deliverately and calmly, and to decide leisurely and peaceably, upon the form of government by which they will bind themselves and their posterity."⁴⁷

⁴⁶ Ibid., i, 229-30.

⁴⁷ *N. Y. Daily Advertiser*, December 3, 1787.

David Ramsay, in his *History of the American Revolution* (1795), waxed still more eloquent over the new system, exclaiming,

"Citizens of the United States, you have a well-balanced Constitution established by general consent, which is an improvement on all republican forms of government heretofore established. It possesses the good qualities of monarchy but without its vices. The wisdom and stability of an aristocracy but without the insolence of hereditary masters. The freedom and independence of a popular assembly acquainted with the wants and wishes of the people, but without the capacity of doing those mischiefs which result from uncontrolled power in one assembly. . . . You have the experience of nearly six thousand years to point out the rocks on which former republics have been dashed to pieces."⁴⁸

These two extracts by no means exaggerate the general feeling as to the significance not only for America but for the whole world of "that glorious fabric of Republicanism, the Federal Constitution." The impression seemed general that liberty and virtue, in their flight from the old world were making one last desperate stand on the western shore of the Atlantic. "We anticipate the praise," said the *Connecticut Gazette*, "with which the new federal government will be viewed by the friends of liberty and mankind in Europe. The philosophers will no longer consider a republic as an impracticable form of government; and pious men of all denominations will thank God for having provided in our Federal Constitution an ark, for the preservation of the justice and liberties of the world."⁴⁹ The New Yorkers were regaled by one of their journals with even a brighter vision of the American mission:

"The cloud which gathers in the European hemisphere serves as a foil, to set off the luster of the prospect that opens upon America. While the ancient establishments of the world are rent with civil discord and national contention, this infant empire deliberately examines her present wants and weaknesses, in order

⁴⁸ David Ramsay, *Hist. of the Amer. Rev.* (Dublin, 1795), 634.

⁴⁹ *Conn. Gazette*, November 2, 1787.

to provide for her future strength and glory. Thus the dotage of our parent continent is stained with wild ambition and phantastic pride, while the vigorous youth of the confederated states expands under the influence of reason and philosophy."⁵⁰

Every great national moment whether of joy or sorrow was made the vehicle of new laudation of the Constitution, and every orator sought to find in it some new manifestation of the national genius, and to impress upon the people its significance for the whole of humanity. As Enos Hitchcock said in his Fourth of July oration at Providence in 1788,

"If from a vile assemblage of vagrants and rogues the wisest and most virtuous nation that ever existed deduced its origin, under the wise constitution and laws of Romulus—what may not be expected from an enlightened, virtuous and heroic people, who have the advantage of the wisdom and experience, under a constitution formed by their free suffrages and the combined wisdom of all those who have gone before them? What glorious prospects open to view when we contemplate the scope given to the human mind for exertion—the extension of commerce—the progress of science, agriculture, manufactures, and all the pleasing and useful arts of refined society, which naturally flow from independence and a government as just in its principles and firm in its texture as it is free in its formation. . . . Behold the majesty of a free people, convened in awful simplicity to consult their safety and promote their happiness."⁵¹

⁵⁰ *N. Y. Packet*, October 2, 1787. Nor had the shrewd feuilletonist of the time lost the opportunity of pointing out to the Americans the advantages to be derived from the influx of immigrants that must ensue on the consummation of the great undertaking for the advancement of civilization. "Private letters from Europe mention that the oppressed and persecuted in every country look with great eagerness to the United States in the present awful crisis of her affairs. Should the new federal government be adopted thousands would embark immediately for America. Holland would pour in, with her merchants, a large quantity of cash among us. Germany and Ireland would send us colonies of cultivators of the earth, while England and Scotland would fill our towns and cities with industrious mechanics and manufacturers." (*N. Y. Daily Advertiser*, August 29, 1787).

⁵¹ Enos Hitchcock, Oration, July 4, 1788, at the Request of the Inhabitants of Providence, 13-16.

Nor is it difficult to understand the awe and thrill of the people at the highly imaginative recital year after year of those proceedings which had been kept practically secret by the framers. Simeon Baldwin's oration at New Haven in 1788 assured his audience that,

"Revolutions in government have in general been the tumultuous exchange of one tyrant for another, or the elevation of a few aspiring nobles upon the ruins of a better system. Never before has the collected wisdom of any nation been permitted quietly to deliberate and determine upon the form of government best adapted to the genius, views and circumstances of the citizens. Never before have the people of any nation been permitted, candidly to examine and then deliberately adopt or reject the Constitution proposed. For a moment turn your attention to that venerable body—examine the characters of those illustrious sages, eminent for political wisdom and unsullied virtue—see them unfolding the volumes of antiquity, and carefully examining the various systems of government, which different nations have experienced, and judiciously extracting the excellence of each—listen to the irresistible reasons which they urge—mark the peculiar amity which distinguishes their debate—hear the mutual concessions of private interest to the general good, while they keep steadily in view the great object of their counsels, and then glory, Americans, in the singular unanimity of that illustrious assembly of patriots in the most finished form of government that ever blessed a nation."²²

But Fourth of July orations were not the only opportunities for the beatification of the Constitution. The eulogies of national heroes were also panegyrics of their greatest creation. No one could underrate Washington's share in the establishment of the new government. The *New York Packet* had announced as early as October, 1787, that,

"George Washington, Esq., has already been destined by a thousand voices to fill the place of the first President of the United States, under the new form of government. While the

²² Simeon Baldwin, Oration Pronounced before the Citizens of New Haven, July 4, 1788.

deliverers of a nation in other countries have hewn out a way to power with the sword, or seized upon it by stratagems and fraud, our illustrious Hero peaceably retired to his farm after the war, from whence it is expected he will be called, by the suffrages of three millions of people, to govern that country by his wisdom (agreeably to fixed laws) which he had previously made free by his arms. Can Europe boast such a man? Or can the history of the world show an instance of such a voluntary compact between the *deliverer* and the *delivered* of any country, as will probably soon take place in the United States."⁵³

In all these eulogies the Constitution shares the praise of its framers.

"The union of the country was in danger, and the evil was of too baneful a nature to admit of a partial or dilatory remedy. But how novel, how aspiring, was the hope of connecting, under one compact code of general jurisprudence, so many distinct sovereignties, each jealous of its independence, without impairing their respective authorities! The unbalanced bodies of the Confederacy had almost overcome the attracting power that restrained them; when the watchful guardian of his country's interests, the heart-uniting Washington, appeared, the political magnet in the center of discord, and reconciled and consolidated the clashing particles of the system in an indissoluble union of government."⁵⁴

Nor was Hamilton's death allowed to pass without many a tribute to the Constitution. In the popular mind Hamilton had been one of the main constructive forces at the convention, though in reality his radical pro-centralization had been, as Professor Farrand well says, "praised but unsupported." According to a New York pastor,

"A prudent secrecy covers the transactions of that august assembly. But could the veil be drawn aside, you would hear the youth of thirty fascinating, with his eloquence, the collective wisdom of the States; and instructing the hoary patriot in the

⁵³ *N. Y. Packet*, October 2, 1787.

⁵⁴ Robert Treat Paine, Eulogy on Washington at . . . Newburyport, January 2, 1800, in *Eulogies and Orations on Washington*, 62-3.

recondite science of government. You would have observed all the emotions of his manly heart occupying, in turn, his expressive features; and see, through the window of his breast, every anxiety, every impulse, every thought, directed to your happiness. The result is in your hands: it is your national existence."⁶⁶

We have thus far considered, somewhat fragmentarily, what we may call the personal, the political, the economic and the nationalistic elements in the creation of the tradition of the Constitution. Before concluding our survey we must point out the influence of two great factors in society which by their very nature are calculated to crystallize and preserve, to amplify and ramify a national tradition. Reference has already been made to the association of Jeffersonianism by its enemies with anarchy, atheism, jacobinism and heresy of every kind. But the Federalists had been strongly supported by the clergy in the struggle for ratification itself, long before the alliance between the anti-French elements in church and state. "A minister of the gospel, through the medium of our paper," says a Federalist organ, "begs leave to ask, whether men can be serious in regard to the Christian religion, who can object to a government that is calculated to promote the glory of God, by establishing peace, order and justice in our country—and whether it would not be better for such men to renounce the Christian name, and to enter into society with the Shawanese or Mohawk Indians than to attempt to retain the blessings of religion and civilization with their licentious ideas of government."⁶⁶ The same paper a few days later reported that "the ministers and Christians of all denominations are now engaged in praying for it, and there is good reason to believe that no prayers have as yet been offered up against it."⁶⁷ Nor was the injunction of an ancient sage, "Pray for the welfare of the government, since but for the fear thereof men would swallow each other alive," hearkened to by Christians only, for, in the grand federal procession in Philadelphia,

⁶⁶ J. M. Mason, Oration commemorative of Hamilton, N. Y., July 31, 1804, 8.

⁶⁶ *New Haven Gazette and Conn. Magazine*, October 12, 1787; *N. Y. Daily Advertiser*, October 20, 1787.

⁶⁷ *New Haven Gazette and Conn. Magazine*, October 18, 1787.

"the rabbi of the Jews locked in the arms of two ministers of the gospel was a delightful sight. There could not have been a more happy emblem contrived, of that section of the new Constitution, which opens all its powers and offices alike, not only to every sect of Christians but to worthy men of every religion."⁵⁸

A clergy fairly unanimously in favor of the new Constitution exerted a profound influence in the formation of a sentiment of devotion to the Constitution. The Methodist Conference that met in New York in May, 1789, congratulated Washington in terms that spoke of "the most excellent Constitution of these States, which is at present the admiration of the world, and may in future become its great exemplar for imitation."⁵⁹ The election and other sermons of New England show how enthusiastically the church contributed to the worship of the Constitution, but it would be wearisome to quote them at length. Year after year it was preached that "behold, it hath pleased Him by whose special providence our empire was founded to unite a great people . . . in adopting a new Constitution in a manner unequalled by, nay without precedent among the nations of the earth."⁶⁰ Many preachers in their Federalist zeal went even further than mere abstract laudation of the Constitution. "May I be permitted to enquire," said Chandler Robbins in 1791, "can it be wise, can it be just, or politic to speak of our national government as a *foreign* jurisdiction? . . . as though the interests of the federal government and those of the States were separate, at least, if not opposed to each other; than which no idea can be harbored more dangerous to our peace, or more untrue. . . . Let us cautiously avoid every dangerous insinuation—every alarming expression, which can have no other effect than to . . . weaken our government, destroy the public confidence, and, in the end, sap the foundations of that fair structure, which under God, has been raised

⁵⁸ From the letter appended to Hopkinson's *Account of the Grand Federal Procession*, July 4, 1788.

⁵⁹ E. S. Tipple, *The Heart of Asbury's Journal*, 280.

⁶⁰ Ammi Robbins, Election Sermon, Conn., May 14, 1789. (Hartford, 1789). 25.

by American wisdom and valor."⁶¹ The Constitution was to the preachers a refuge in "the howling wilderness of an almost national anarchy, where were pits, scorpions and fiery flying serpents,"⁶² its adoption was "declarative of the superintendence of God" and its operation was responsible not merely for the growth of religion, but for the new plantations, cities, bridges, canals, manufactories, colleges, seminaries, public libraries, and even a new school of scientists."⁶³

That much of this clerical admiration of the Constitution degenerated into a rabid hatred of the later anti-Federalism and a shameless use of the pulpit for political purposes is admitted.⁶⁴ A clever Republican lampoonist declared that if Dr. Timothy Dwight "would advocate the cause of the Church militant as strenuously as he has done the cause of Federalism triumphant—we should have turnpike roads to the New Jerusalem all paved with jasper and gold. . . ."⁶⁵ But this aspect of the alliance between the forces of religion and the bitterest foes of Jefferson and his school does not concern us here. All that is relevant and significant in the present connection is that the clergy supported the Constitution as "the sanction of the liberties of the people" and the liberties of the Church, and in prayer and discourse they instilled into the people a sense of the intimate connection between divine government and constitutional progress and supremacy.

The lawyers were equally emphatic in their declarations of loyalty to the Constitution and equally influential in impressing the people with its significance and its promise. In the great federal processions it was always the gentlemen of the bar who

⁶¹ Chandler Robbins, Election Sermon, Mass., May 25, 1791 (Boston, 1791), 46-7.

⁶² John Smalley, Election Sermon, Conn., May 8, 1800 (Hartford, 1800), 35.

⁶³ See Nathaniel Emmons, Thanksgiving Day Sermon, Franklin, Mass., December 15, 1796, (Worcester, 1797,) 19-20.

⁶⁴ See A. E. Morse, *The Federalist Party in Mass. to the year 1800* (Princeton, 1909), 184-8 and appendix J for a valuable discussion of the political influence of the clergy in New England; also D. D. Addison, *The Clergy in American Life and Letters*, 181.

⁶⁵ *Federalism triumphant*, . . . A political farce in six acts, as performed at Hartford and New Haven, October, 1801 (1802), 7.

solemnly bore aloft amidst the throngs which Burke had called "a nation of lawyers," the new Constitution. It was not until the famous case of *Chisholm vs. Georgia* that the juristic theory of the Constitution as the work of the whole people was clearly enunciated. This conception, enabling or causing the courts to give so deep a significance to the words of the Preamble, "We, the people," and to ignore completely the fact that this phrasing was the fortuitous solution by the convention's committee on style of a problem in rhetoric, and not the premeditated statement of a political principle⁶⁶ was thus stated by Chief Justice Jay:

"In the hurry of war, and in the warmth of mutual confidence they made a confederation of the States the basis of a general government. Experience disappointed the expectations they had formed from it; and then the people in their collective and national capacity, established their present Constitution. It is remarkable that in establishing it, the people exercised their own rights, and their own proper sovereignty, and conscious of the plentitude of it, they declared with becoming dignity, "We, the *people* of the United States, do ordain and establish this Constitution."⁶⁷

But it was not so much in judicial decisions that the lawyers exerted great influence in the molding of popular reverence for the Constitution. The juristic theory of the Constitution was after all the possession of only a very limited class in the community. If the lawyers to any special degree stimulated the Volksgeist to enthusiasm for the new instrument of government it was through their political activity and through those now almost obsolete non-technical charges to the grand juries that were the great feature of the sittings of a court at the end of the eighteenth century, in the days when the judges made a "public entry" into the towns, sometimes even "amidst the ringing of bells and the roar of cannon."⁶⁸ The federal judges, travelling on circuit from one end of the United States to the other, in

⁶⁶ See Farrand, *The Framing of the Constitution*, 190, 191.

⁶⁷ *Chisholm v. Georgia*, 2 Dallas, 470-71.

⁶⁸ Van Santvoord, *Lives of the Chief Justices* (N. Y., 1854), 48.

these charges preached what really amounted to awe-inspiring political sermons, often of the orthodox homiletical length, in which the Constitution, its uniqueness and its potentialities, were often the central theme. Chief Justice Jay, for instance, in his charges to the grand juries of New York, Connecticut, Massachusetts and New Hampshire in April and May, 1790, said:

"Providence has been pleased to bless the people of this country with more perfect opportunities of choosing and more effectual means of establishing than any other nation has hitherto enjoyed; and for the use we may make of these opportunities and of these means we shall be highly responsible to that Providence, as well as to mankind in general and to our own posterity in particular."⁶⁹

Judge Iredell in his charge at Richmond in 1796 thus described the genesis of the Constitution:

"The voice of the Union disregarded—public debts not only unpaid but unprovided for; private as well as public credit at a very low ebb; commerce languishing; agriculture discouraged; measures of disunion every day adopting; an illiberal malignant jealousy taking place of rational and manly confidence, and the most melancholy symptoms prevailing for a speedy dissolution of the Union, or a disgraceful and ungovernable anarchy. The magnitude of the danger alarmed all considerate men, and by one of the greatest and most disinterested efforts ever made by public bodies, each making voluntary sacrifices to accomplish a magnanimous reformation, the present Constitution of the United States was formed and adopted."⁷⁰

Nor were such charges confined to the federal courts alone. Washington wished sincerely that the "good example" of Judge Addison of the Pennsylvania court of common pleas "in endeavoring to bring the people of the United States more acquainted with the laws and principles of their government"⁷¹ were followed by others. Judge Addison charged in 1791 as follows:

⁶⁹ Jay, *Corr. and Public Papers* (ed. Johnston), iii, 338.

⁷⁰ McCree, *Life and Corr. of James Iredell*, ii, 484.

⁷¹ Addison, *Reports* (Washington, 1800), Appendix, iv.

"That a people, who have long subsisted in a national state, unassailed by calamity, should voluntarily sit down, and trace their progress from the first rudiments of society, dissolve every band that held them together, eradicate every prejudice, respectable from time and habit, and by the force of reason, enlightened by the speculation and experience of ages, establish a system of political freedom, is a spectacle reserved for the eighteenth century, reserved for America to set an example of to the nations of the earth, and worth the discovery of a new world to exhibit."⁷²

And later he went to the root of the matter:

"The laws and Constitution of our government ought to be regarded with reverence. Man must have an idol. And our political idol ought to be our Constitution and laws. They, like the ark of the covenant among the Jews, ought to be sacred from all profane touch."⁷³

And the grand jury usually responded that they were "convinced of the importance of the observations delivered in your charge, to men who have the happiness to live under a government of their choice," and believing that "the publication of such a charge . . . will be highly beneficial to the citizens," unanimously requested a copy of the charge for the public press, and within a very few days the newspapers brought the wisdom and political learning of the Constitution to the fire-side of every freeman for miles around.

At the end of a survey of the nature, the sources and the "transmission power" of the tradition of the Constitution we feel the wisdom of Anatole France's remark, through the lips of the old Abbé Coignard, that "popular government, like monarchy, rests on fiction and lives by expedients. It suffices that the fiction be accepted and the expedient happy." The fiction that the Constitution was the unanimous and deliberate political mandate of an inspired and all-inclusive democracy has been accepted by the people, and few will deny the happiness of the expedient. In the Federal Convention Nathaniel Gorham had asked, "Can it be supposed that this vast country including the

⁷² Ibid., appendix 1.

⁷³ Ibid., appendix, 242.

western territory will 150 years hence remain one nation?"⁷⁴ If we as yet show no signs of dissolution, may we not attribute it in part to that first decade when the American people, their lawyers, their merchants, their clergy, their farmers, their procession-loving mechanics, their conservatives, their radicals, their democrats and their reactionaries, were all for one reason or another espousing the cause of that Constitution the ratification of which had been the subject of so bitter and in so many cases so narrow a conflict? It is this fact that Van Holst overlooks in that long chapter on the "canonization of the Constitution," with its rumblings and mutterings against the "national fetish," the "chronic constitutional scruples of the minority" and the "a priori convictions of the masses of the people." "If the original strength of the Constitution," says Mr. Coudert, "was at the outset its merits, its maintenance was owing to its having become the subject of a cherished tradition based on sentiment rather than reason."⁷⁵ What the bases of the tradition were we have tried to show here. But it must be agreed that it was the tradition that kept the Constitution no "mere lawyer's document," but in the words of President Wilson, "the vehicle of a nation's life."

⁷⁴ Farrand, *Records of the Federal Convention*, ii, 221.

⁷⁵ F. R. Coudert, *Certainty and Justice* (N. Y., 1913), 24-25.

ADDENDUM

In note (12) add: O. G. Libby, *Political Factions in Washington's Administration*. Quar. Jr. Univ. of N. Dakota, iii, 293.

To note (20) add: A. B. Hart, *National Ideals Historically Traced*, 144.

To note (22) add: Cf. O. G. Libby, *Early Political Parties in the United States*, Quar. Jr. Univ. of N. Dakota, ii, 216.

To note (54) add: "The people he has saved from external tyranny," said George Minot in Boston, "suffer from the agitations of their own unsettled powers. The tree of liberty, which he has planted and so carefully guarded from the storms now flourishes beyond its strength: its lofty excrescences threaten to tear its less extended roots from the earth, and to prostrate it fruitless on the plain. But, he comes! In convention he presides over councils, as in war he had led to battle. The Constitution, like the rainbow after the flood, appears to us now just emerging from an overwhelming commotion; and we know the truth of the pledge from the sanction of his name. The production was worthy of its authors, and of the magnanimous people whom it was intended to establish. You adopt it, you cherish it, and you resolve to transmit it, with the name of Washington, to the latest generation, who shall prove their just claim to such an illustrious descent." (George Richard Minot, *Eulogy on Gen. Washington*, Boston, Jan. 9, 1800, *ibid.*, 22-23.)

LEGISLATIVE NOTES AND REVIEWS

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Law Reform—New York. The purpose of this note is to give an outline of law reform in New York down to the presentation of the report of the statutory consolidation board recommending the repeal of the code of civil procedure and the substitution in lieu thereof of a civil practice act and rules.

Prior to 1909 there had been several reports of committees of the legislature, of the New York State Bar Association and the Association of the Bar of the City of New York, recommending either practice acts and rules, or simplification of the civil procedure on the lines of the English judicature act, in lieu of the code of civil procedure; but none of these committees was able to pass a single important bill, although some of them did prevent the passage of very many bad procedural bills promoted by persons with axes to grind. In 1909 the New York City Bar Association appointed a special committee to consider the simplification of the New York procedure. Cipriano Andrade, the introducer of the resolution (now a member of the New York State Bar Association committee to examine the practice act prepared by the board of statutory consolidation), was its first chairman. In 1911 it became the City Bar Association's standing committee on law reform, whose first chairman was Everett P. Wheeler, then and now the chairman of the American Bar Association committee to suggest remedies, etc. Its present chairman is George Gordon Battle. In civil procedural matters from 1910 to date it has at all times coöperated (in a sort of informal alliance) with the law reform committee of the New York State Bar Association, whose chairman from 1910 to 1914 was A. T. Clearwater, now president of that association.

This year Judge Clearwater was succeeded as chairman by Henry W. Taft. In every year since 1909 these committees have procured the passage of bills or the promulgation of court rules abating major archaisms of the civil procedure, or else have inspired state commissions to prepare bills which have passed abating procedural archaisms in such directions as a revision of the surrogates law (1914) and a New York

City municipal court act (1915). The Massachusetts Bar Association (in alliance with the Boston Bar Association) and the New Jersey State Bar Association have successfully followed New York's example.

The New York City Bar Association committee on the simplification of the procedure published a preliminary report in the summer of 1909, and presented its final report (with 52 recommendations of which the association adopted 43) in December, 1909. In January, 1910, the joint bar association campaign began to procure their legislative enactment or promulgation as rules of court, and was continued until the presentation of the statutory consolidation board's report recommending a practice act, rules and forms in 1915.

In 1910 the legislature passed seven of the joint city and state bar association bills. Of these the (1) bill giving the surrogates courts statutory equity jurisdiction on accountings (2) the bill authorizing jury trial in the supreme court in the first instance in every surrogates proceeding where a constitutional right to trial by jury existed thereby abolishing statutory double trials in probate matters and (3) the bill shortening to three extra days the double time formerly allowed after the service of a pleading or other paper by mail, became laws. Bills (1) abolishing the statutory double trial and discretionary third trial in ejectment (2) authorizing the clerk of every court of record to draw and enter short form judgments whenever possible in lieu of long form judgments with unnecessary recitals which had to be drawn by the attorney (3) providing a local flat filing system in each county of New York City and (4) providing a local (but not necessarily flat) filing system for each county in the State, also requiring that the opinion of the appellate division should for the purpose of an appeal to the court of appeals be deemed a part of the record, were all vetoed. In the fall of 1910 the supreme court justices promulgated as a general rule of practice a part of the committee's recommendation that opinions should be deemed a part of the record on appeal, also the recommendation for a general compulsory exchange of contested motion papers when moving papers were served ten days before the return day of a motion, also the recommendation for a proper index of and headnoting each page of a case on appeal or appeal papers. In October, 1910, the county clerk of New York County voluntarily adopted a local flat filing system, which was soon made compulsory by a local rule promulgated by the appellate division.

In 1911 the joint bar association campaign continued. Double trials in ejectment were abolished by statute and a statutory flat filing

system for New York County was introduced, overcoming two of the vetoes of 1910. A short form order bill authorizing the court to enter its own orders on a short printed form or endorsement on the motion papers in lieu of entering long form orders after notice of settlement was enacted. Judicial decisions abated a procedural evil in relation to demurrers. Omnibus motions for general, alternative, or inconsistent relief were introduced; the abuses relating to the common law lack of jurisdiction of suits by or against a foreign executor were abolished, and in criminal cases the testimony was required to be printed in question and answer in lieu of the narrative form.

In 1912 a bill was enacted doing away with Baron Parke's harmless error doctrine of 1835 as a ground for granting a new trial as matter of right in all jury cases (and even in many equity cases), reestablishing the equity practice of one trial of the facts and one course of appeal in all equity suits and so far as it could constitutionally be done in jury cases. (In the fall of 1813 a rule of practice was promulgated requiring the case on appeal on a question of fact to be in *haec verba*, or question and answer, in lieu of the former narrative form. In April 1914, the court of appeals adopted this rule in capital cases.) Some local archaisms in regard to the form of orders of reversal were abolished in 1912 and the statutory consolidation board was authorized to report a plan for the classification, consolidation and simplification of the civil practice.

In 1913 a bill making the opinion of the appellate division a part of the record on appeals was enacted, overcoming the major part of the third of the vetoes of 1910. A number of local procedural abuses were abated. The time of the statutory consolidation board to report was extended, and it was authorized to prepare and present to the legislature a practice act, rules of court and short forms for pleadings and other legal papers used in litigation, to simplify and expedite the present civil procedure so as to provide so far as practicable for one form of action, one trial of the facts and one course of appeal.

In 1914 and 1915 owing to the forthcoming report of the statutory consolidation board, the civil procedural changes enacted or promulgated were generally of but local or state interest. In 1914 a revision of the surrogates law was enacted through the efforts of a state commission composed of representative surrogates.

In 1915 a modern and efficient municipal court act for New York City was enacted through the efforts of a state commission composed in part of leading municipal court justices. An act abolishing many

of the abuses of expert witnesses in criminal cases or in habeas corpus proceedings by providing for the appointment of disinterested insanity experts (Laws 1915, Chap. 295), was passed through the persistence and activity of a committee headed by President Clearwater of the State Bar Association.

In 1915 the Association of the Bar of the City of New York approved the unanimous report of its law reform committee for the reform of the criminal procedure on the lines suggested by the decisions of the supreme court of the United States and the modern English and federal criminal practice. During 1914-1915, the law reform committee of the City Bar Association made a nation-wide investigation of the public defender project and reported against it.

As these lines are written, the complete report of the statutory consolidation board recommending a short practice act and court rules in lieu of the code of civil procedure, is at hand. The writer trusts it will be enacted next year.

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Legislation of 1914 Affecting Nominations and Elections. The small amount of statute making in the few States whose legislatures were in session in 1914 indicates no new tendencies in nomination and election practices. Most of the legislation is concerned with modifications of the direct primary. At the same time the marked tendency toward the "short ballot" noticed last year continues, and "corrupt practices" laws increase in favor. Some of the more specific changes may be considered as follows:

Equal suffrage. Suffrage qualifications furnish the starting point in considering election laws. In this respect the movement for woman suffrage made decided gains during the year. Montana and Nevada adopted constitutional amendments admitting women to the electorate; while the Massachusetts (Laws 1914, p. 1055) legislature passed resolutions to submit like amendments to the voters in the respective States in 1915, after the legislatures of 1915 have ratified the proposals. New York, in changes in the charters of the cities of Jamestown (Laws 1914, p. 785) and Norwich (Laws 1914, p. 87), provides that women who pay taxes may vote in all elections, in those cities, in which only tax payers participate. The tendency toward equal political rights for women is further illustrated by the amendment to the Louisiana constitution (Laws 1914, p. 251), which makes women eligible to hold office

in municipalities or in public educational, charitable or correctional institutions.

Nominations. Massachusetts (Laws 1914, p. 959) adopted by referendum the "open" primary. New York (Laws 1914, p. 714) makes several changes in its general primary law, viz., party emblems are abolished in the primaries; a person nominated by the primary must accept the nomination, his alternative being to decline in advance of the primary in the manner prescribed by law; delegates and alternates to the national conventions are to be chosen directly in the primaries, apparently without instructions. Rhode Island (Laws 1914, pp. 44, 45, 49), while making a number of changes in its law regulating the party caucus, still hesitates to adopt the direct primary; indeed in a nominating law for some of the large cities (Laws 1914, pp. 68 ff.), the provisions regarding eligibility for participation in the caucus will operate to increase the control of the party machinery over the party activities. Virginia's new primary law (Laws 1914, p. 514) doesn't go very far in the direction of state control of parties. In the first place it is optional; secondly the primary officials, though appointed by election boards, must be members of the respective parties; thirdly, one who would participate in any party's primary must have voted for that party's nominees in the last election or must declare his intention of supporting the party in the future, and in addition must not be "disqualified by reason of other requirements in the law of the party to which he belongs;" and finally each candidate must comply with the rules and regulations of the proper committee of his party, besides filing with the proper office a declaration of candidacy accompanied by a petition and filing fee amounting to two per cent of the salary of the office sought or one dollar where no salary is attached to the office. The date for the general primary is the first Tuesday in August, and if there is only one candidate for an office then no primary is held for that office. Mississippi (Laws 1914, p. 194) adopts the second primary in the nominations for congressmen; if no candidate in the first primary (which is held on the third Tuesday in August) receives a majority the two highest stand three weeks later in a second primary. Mississippi, in bringing the election of United States senator within the operation of its nomination laws, set the primary at the time of the congressional election next preceding the general election at which a senator is to be chosen, i.e., a two year campaign period. Louisiana (Laws 1914, p. 519) sets the senatorial primary sixty to seventy days before the election. The same State (Laws 1914, p. 460), in its law for commission-governed

cities provides that nominations in such cities shall be under the general primary laws, i.e., partisan, the expense to be borne by the parties. In Boston (Mass. Laws 1914, p. 760), nomination papers for mayor need contain only three thousand signatures instead of five thousand as heretofore, and for councilmen and school committeemen the reduction is from five thousand to two thousand. Louisiana (Laws 1914, p. 120) takes care of the Progressives by authorizing nominations by any party which polled ten per cent of the vote in the last presidential election.

Elections. The following States made the necessary changes in their laws to accommodate direct election of United States senators: Rhode Island (Laws 1914, pp. 40, 44, 65, 76), Maryland (Laws 1914, pp. 790, 1323, 1337), Louisiana (Laws 1914, p. 471), Mississippi (Laws 1914, p. 191) and California (by constitutional amendment). Generally speaking nomination and election are to be at the same time and in the same manner as for congressmen, vacancies to be filled temporarily by appointment by the governor.

In Georgia (Laws 1914, p. 47) the time of holding the general election for state and county officers is changed from the first Wednesday in October to the first Tuesday after the first Monday in November. Boston's annual city election is changed from January to December, i.e., the sixth Tuesday after the state elections (Mass. Laws 1914, p. 760).

A few changes may be noted respecting ballots. In New Jersey (Laws 1914, pp. 194, 365), sample ballots are to be mailed every voter on the Wednesday preceding every general or special election, those for referendum measures to be accompanied by such portion of the statute or constitution as is necessary to indicate to the voter the relation of the proposed change to the existing law. Louisiana (Laws 1914, pp. 148, 547) adds some safeguards with respect to voting booths, provides that numbered ballots are not to be handed to electors in numerical order or in such way as to tend to violate the secrecy of the ballot, and prohibits independent candidates from using the names of political parties to designate their candidacies.

Rotation of names and preferential voting were both included in the city manager plan passed by New York legislature (Laws 1914, p. 1659) for the city of Olean but rejected by the voters of that city. Preferential voting, however gets encouragement in New Jersey (Laws 1914, p. 170), which adopts it in an amendment to its commission-government law. Nominations are by petition only, and in the election the voter may express his first, second, third and "other choices." If no

candidate receives a majority of first choice votes, then all the choices are added together and the highest resulting number decides.

The short ballot made some headway during the year, particularly in the matter of increasing the terms of office, e.g., Georgia (Laws 1914, p. 43), which changes all county offices from two to four year terms; Virginia (Laws 1914, p. 168), which in all three of its plans for city government makes the terms of officers four years instead of one and two as heretofore; New Jersey (Laws 1914, pp. 66, 106, 107), where the terms of various officers in cities of the fourth class are increased from one to three years. New York (Laws 1914, p. 1883), in its general law for the organization of cities provides six different plans in all of which only mayor and councilmen are elected. Contrary to the short ballot principle is the action of Georgia (Laws 1914, Part iii, Title 1), which in many instances adheres to the short term—one or two years—for city officers, and that of Mississippi (Laws 1914, p. 522), which by constitutional amendment abandons the plan of appointing judges of the supreme court by the governor and instead provides for election directly by districts. It is to be noted however that the six judges are to serve for eight years and not all are to be elected at one time.

The recall is adopted by constitutional amendment in Louisiana, Kansas and North Dakota. The Louisiana law (Laws 1914, p. 575) affects all state, district, parish and municipal offices, except judges. The recall ballot contains two separate items; the voters pass on the question of recalling the officer and at the same time vote for candidates for the anticipated vacancy. A majority vote is necessary to recall or to elect, but in the latter first and second choices are permitted. Mississippi (Laws 1914, p. 203) adopts for cities an interesting variation of the usual recall procedure. An officer impeached by a recall petition signed by twenty-five electors may resign, or the "municipal authorities" may remove him, or a recall election may be held within sixty days. Since nothing is said about the succession it may be assumed that the recall simply creates a vacancy to be filled in the regular manner. If the recall election fails the officer at whom it was directed cannot be again subjected to recall proceedings during the term of his office.

Corrupt practices. In connection with its optional primary law Virginia (Laws 1914, p. 514) makes provision against corrupt practices. Expenditures are not permitted except for certain purposes, e.g., traveling, advertising, postage, headquarters, etc., and in amount for any one candidate may not be more than fifteen cents for every vote cast

by that candidate's party for the candidate receiving the largest vote at the last gubernatorial election in the political subdivision for which the primary is held. In legislative districts where there are more than six candidates to be elected the limit is 40 per cent of the salary attached to the office. Statements of expenditures must be filed within twenty days after the primary. Paid advertisements of candidacy in newspapers must be so marked. Bribery, selling votes, and making promises to gain support are prohibited. Penalties vary for different offenses but the maximum is five hundred dollars fine and disqualification from holding office for five years. Massachusetts (Laws 1914, p. 937) strengthens its law in several respects. Corrupt practices by the candidate are more explicitly defined and include violation by himself or another of the provisions regarding limitations on expenditures, making false returns, bribing a voter directly or indirectly, aiding illegal voting, obstructing or delaying a voter or interfering with an election officer, altering, defacing, or destroying ballots, tampering with or injuring voting machines or ballot boxes, or attempting the same. The limit on expenditures for any one candidate under the previously existing statutes was twenty-five dollars for each thousand of the voters qualified to vote for the office concerned, and though any candidate could spend one hundred and fifty dollars, the maximum was five thousand dollars for both primary and election. The changed law provides a schedule for both primary and election for the various offices; e.g., candidates for United States senator or for governor may spend twenty-five hundred dollars in the primary and five thousand in the election, candidates for minor state offices may spend lesser amounts the smallest being for representatives where the limit is one hundred dollars for the primary and the same amount for the election. Candidates for other offices may spend one hundred dollars for the primary or election, or twenty dollars per thousand voters up to a limit of fifteen hundred dollars in the primary and three thousand dollars in the election. Nobody is prohibited from working for a candidate and paying his own expenses, but persons not acting under the authority of a party committee or a candidate are not permitted to receive or expend money in behalf of a candidate. The enforcement procedure is somewhat stiffened and the penalty is increased by the addition of disfranchisement for three years to the existing disqualification from holding office for a like period. The statute excepts from its operation town offices in towns of less than ten thousand inhabitants. Louisiana (Laws 1914, p. 547) enacts that employees of the State, parish, municipal or fed-

eral government are not to act as election officials during their terms nor until six months after they leave their offices. On the other hand, persons elected to office are not to appoint election officials to positions in the State, parish or municipal governments until nine months after the election. Wards or precincts having less than twenty voters are not affected by the act. In Mississippi (Laws 1914, p. 107) bank officers and stockholders are prohibited from contributing directly or indirectly to the campaign expenses of any candidate for bank examiner. In New York (Laws 1914, p. 216), members of the commission which administers the workmen's compensation law are not permitted to serve on or under any committee of a political party.

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Legislation of 1915 Concerning Nominations and Elections. The most striking features of the development of election laws in 1915 are the extension of the presidential preference primary to a number of States; the adoption by California of a general non-partisan election law; and the vast amount of tinkering with primary laws. In addition it may be noted that certain new features are gaining ground, e.g., registration by the card system; voting by mail and other forms of absentee voting; and rotation of names on ballots. The changes, classified in the various fields are discussed more in detail in the following paragraphs.

Qualifications for voting. The question of extending the right to vote to women is to be submitted to the voters of New Jersey on October 19, 1915, a resolution passed by the legislature in 1914 having been again passed. Woman suffrage will also be submitted to the voters in New York, Pennsylvania, and Massachusetts at the regular election in 1915. The constitutional amendments passed by the legislatures of Arkansas (Laws 1915, p. 1492) and South Dakota (Laws 1915, p. 46), are to be submitted to a referendum at the general elections of 1916. At the same time in Washington the voters will pass upon a constitutional amendment limiting the right to participate in bond elections to those who, in addition to being otherwise qualified, own property assessed for taxation upon which the tax has been paid within a year (Laws 1915, p. 352).

Registration of voters. In this field the tendency seems to be toward adopting a permanent register, and therefore toward keeping the register on cards instead of in books. Montana (Laws 1915, p. 263 ff.), Nebraska (Laws 1915, p. 382 ff.), and Oregon (Laws 1915, p. 299 ff.),

adopt the latter system, while Indiana (Laws 1915, p. 530 ff.) and Washington (Laws 1915, p. 33 ff.), though providing for a permanent register stick to the registration book. Under these laws permanent registration offices are provided, registration is possible at all times except just preceding elections, and the voter is not required to re-register unless he changes his residence or otherwise invalidates his earlier registration, except in Nebraska and Washington where a new registration occurs every four years.

Nominations. New direct primary laws were adopted by Nevada (Laws 1915, p. 453 ff.), North Carolina (Laws 1915, p. 154 ff.), West Virginia, and South Carolina (Laws 1915, pp. 81 ff. and 164 ff.). Vermont (Laws 1915, p. 58 ff.) submits its new primary law to a referendum in the spring of 1916, but in any event it is to go into effect in 1927. The first four of these are of the "closed" type while the Vermont primary is "open." The Nevada law provides only for direct election of delegates to county and state conventions which in turn nominate candidates for public office. It merely brings party activities within the view of the law. The primary is held in August and the conventions in September in anticipation of November elections. In North Carolina the general primary is held on the first Saturday in June, in South Carolina the last Tuesday in August, and in Vermont on the second Tuesday in September. In both North Carolina and South Carolina a majority vote is required to nominate and if no candidate receives a majority a second primary is held later in which the two highest candidates stand. In South Carolina in case of a tie in the second primary, a third primary is to be held. In North Carolina the second primary may be dispensed with if the candidate standing second on the list so desires. Indiana (Laws 1915, p. 359 ff.) and South Dakota (Laws 1915, p. 498 ff.), revise their primary laws. Both are of the "closed" type, in Indiana held in March and in South Dakota in June. Arizona (Laws 1915, p. 89 ff.) amends its primary law, changing from "open" to "closed" primary. "Declarations of candidacy" are becoming popular as substitutes for candidacy by petition in the primary. Indiana (Laws 1915, p. 365), Oregon (Laws 1915, p. 124), Kansas (Laws 1915, p. 252), and North Carolina (Laws 1915, pp. 154 ff.), provide for this method; declarations must be accompanied by a filing fee varying in amount from fifty cents or one dollar up to one hundred and fifty dollars, according to the importance of the office. In Oregon and Kansas the declaration of candidacy is alternative with the petition method; in the other two States it is the

only method. South Dakota and Vermont in the acts mentioned above stick to candidacy by petition in the primaries. A tendency to eliminate entirely from the election candidates who fail of nomination in the primary is apparent in the acts passed by Nebraska (Laws 1915, p. 103) and New Jersey (Laws 1915, p. 155), prohibiting a person who has been an unsuccessful candidate at a primary from becoming a candidate by petition for the same office at the subsequent general election. Likewise in the North Carolina primary law referred to above it is provided that candidates in the primary must pledge themselves to abide by the results of the primary. The method of drawing up a party platform under the direct primary has occasioned some perplexity. Indiana in its revised law mentioned above entrusts this duty to state conventions made up of delegates elected at the primaries. In the South Dakota act previously mentioned the provision is that delegates to a state convention acting with the candidates and the state central committee of each party draw up the platform. If the Vermont act goes into effect the platform will be formulated at a meeting of candidates for state offices, senators and representatives. It is Washington, however, which proposes an entirely new method of dealing with this problem (Laws 1915, p. 174 ff.). In May of each election year caucuses are held to elect delegates to the county conventions to be held in the same month, which in turn choose delegates to a state convention to be held in June. The state convention of each party draws up a statement of "its political principles and its legislative program," which must be accepted and endorsed generally by every person who runs as a candidate in that party's primary in the following September.

Presidential preference primaries are adopted in six States. In Oregon (Laws 1915, p. 348) and South Dakota (Laws 1915, p. 498), delegates and alternates to the national conventions are chosen in the primaries but are not required to pledge themselves to support any particular candidate for president, nor, in Oregon, is the preferential vote (taken at the same time) on president and vice-president more than advisory to the delegates. In Ohio (Laws 1915, pp. 543, 545), the candidates for delegate and alternate declare their first and second choice among the candidates for president and these are printed on the ballots. The preferential vote in the same primary is not binding on the delegates. In California (Laws 1915, p. 279, 281), candidates for delegates have the option of stating their preferences. Delegates select their own alternates. This is also the method of selecting alternates in Minnesota (Laws 1915, p. 508). In North Carolina (Laws 1915,

p. 155), the results of the preferential primaries in the districts bind the delegates from the districts, while the result in the State binds the delegates at large. In Indiana (Laws 1915, p. 367, 378, 379) and Vermont (Laws 1915, p. 67, to be submitted to referendum in 1916), while the delegates and alternates are to be chosen by state conventions, presidential primaries are to be held the results of which in the former State are binding if a candidate receives a majority of the votes, and in the latter only advisory.

Second choice voting is adopted by Indiana (Laws 1915, pp. 372, 377), in its revised primary law. Minnesota, however, abandons this system after four years trial (Laws 1915, p. 223).

Rotation of names on the ballot is provided in the following States: North Carolina (Laws 1915, p. 154 ff.) in its primary law; Vermont (Laws 1915, p. 58 ff. to be submitted to referendum in 1916) in its primary law (applies to candidates for governor only); Indiana (Laws 1915, p. 368) in its primary law (applies if more than four candidates for one office); Nebraska (Laws 1915, p. 93) for all elections in counties of 50,000 or more (Douglas and Lancaster counties only are affected).

Non-partisan elections are adopted by Nebraska (Laws 1915, p. 543) for school officers only, and by South Dakota (Laws 1915, p. 361) for judges of the supreme and circuit courts. But the most sweeping change in this respect is that proposed in California (Laws 1915, pp. 272, 285, 844, 846) where, unless the acts of the legislature are defeated in the special referendum election to be held October 26, 1915, all state officers including members of the assembly will be nominated in non-partisan primaries and elected without legal recognition of their party affiliations. Since county and city officers and judges are already elected in California in this manner, that State intends to recognize partisanship only for candidates for United States senator, representatives in congress, presidential electors, and delegates to national party conventions.

Elections. Provision for directly electing United States senators is adopted in the following States: Indiana (Laws 1915, p. 13), Maine (Laws 1915, p. 36), Montana (Laws 1915, p. 281), Nevada (Laws 1915, p. 85), New Jersey (Laws 1915, p. 566 ff.), New Mexico (Laws 1915, p. 39), North Dakota (Laws 1915, pp. 192, 193), South Dakota (Laws 1915, p. 367), Vermont (Laws 1915, p. 70 ff.) and Washington (Laws 1915, p. 232). The only variation in procedure is in respect to filling vacancies. In most cases temporary vacancies are filled by appointment by the governor until the next general election is held. In Mon-

tana a special election is called, the governor meanwhile filling the vacancy, but in Maine and Washington the vacancy can only be filled by a special election.

Absentee voting gains favor. Four States, Montana (Laws 1915, p. 241 ff.), Oregon (Laws 1915, p. 307), Vermont (Laws 1915, p. 4) and Washington (Laws 1915, p. 691), are added to the list of States which permit a person who is unavoidably absent from his county on election day to vote in another county. In the first of these voting is by mail, in the latter three the elector votes at the polling place in the precinct where he happens to be and is therefore limited to an expression of his choice on state and district officers only.

Arkansas (Laws 1915, p. 402) lines up with the majority of the States by changing the date of its general election from the second Tuesday in September to the first Tuesday after the first Monday in November. Nevada (Laws 1915, p. 463 ff.) revises and codifies its general election laws. Kansas (Laws 1915, p. 264) numbers each one of its seven supreme court justices and requires candidates for these positions to run for a particular number (e.g., Judge No. 1, Judge No. 2, etc.) in both primary and election. Connecticut (Laws 1915, p. 2087) attempts to make "split" voting difficult by requiring such voting to be for each candidate separately, i.e., ballots are not marked in the party circle and also for individual candidates of other parties. But if the latter practice is followed the intentions of the voter are to be carried out, which leaves the matter about as it was.

The Recall is adopted by New Jersey (Laws 1915, p. 622 ff.) for commission-governed cities. The petition for the recall must carry signatures of 25 per cent of the electors. An interesting variation from the ordinary recall procedure is the provision permitting the officer against whom charges are filed to resign within three days; but assuming that he has resigned unless within fifteen days he files a petition to contest the recall. A majority vote is necessary to recall an officer. Some other changes in recall procedure are as follows: In Washington (Laws 1915, p. 197 ff.), recall petitions may be signed at the office of the registration officer, and more careful checking of signatures is required. Nebraska (Laws 1915, p. 212) reduces the percentage of voters on recall petitions from twenty-five to fifteen for the city of South Omaha. Nebraska (Laws 1915, p. 211) also permits removal proceedings before the district court to be initiated by twenty freeholders of a city instead of by the city officials only.

Corrupt practices. Changes in corrupt practice laws were made in

Indiana (Laws 1915, p. 359), North Carolina (Laws 1915, p. 157) and Vermont (Laws 1915 p. 66—subject to referendum in 1916) in connection with the primary laws enacted in those States. Kansas (Laws 1915, pp. 179, 266–267), Nevada (Laws 1915, pp. 82, 376), New Hampshire (Laws 1915, p. 234), Nebraska (Laws 1915, p. 105) and Ohio (Laws 1915, p. 350) modify their corrupt practice laws, usually strengthening them by making them more definite. The amount of campaign expenditures seems to occasion the most concern, and in this respect there is a tendency to raise the limit.

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Legislative Investigations Authorized. A special commission in Illinois will continue the work of the commission provided for in 1913 to revise the building laws of the State.

A new efficiency and economy commission consisting of four senators and four representatives was provided for in Illinois to continue the work of the former commission in preparing "a comprehensive survey of all public officers and authorities" to investigate the efficiency of all organizations and administration and to make recommendations and prepare plans for the consolidation, coördination and reorganization of such public bodies. Illinois also provided for a special commission to investigate the causes for the spread of the foot and mouth disease.

Another investigation in Illinois will be on the subject of the operation of state pension laws including the operation of similar laws in other States and countries. The subject of home-finding institutions will also be investigated in Illinois by a special committee.

Unemployment will be further investigated in Illinois continuing the work of a former commission.

Minnesota provided for a commission on interstate drainage in conjunction with a similar commission from the State of Iowa.

Michigan created a commission to investigate the existing system of public care and relief of poor persons.

Massachusetts provided for several investigations by special commissions and by administrative authorities.

The highway commission will investigate the subject of lights on motor vehicles. The health department will report upon the question of reimbursing the cities and towns for hospital care of tuberculous persons. The board of gas and electric light commissioners are directed to report on automatic means of shutting off gas from buildings

in case of fire, and on the inspection and testing of gas meters and in the London sliding scale of charges. The secretary of the commonwealth and the attorney-general report upon the feasibility and desirability of legislation providing for absent voting. The commission on probation will report upon the administration of the juvenile law. The public service commission is directed to make a report on the expediency of legislation relating to extension telephone and telephone charges.

The Massachusetts highway commission will report on highway construction relative to the safety of horses and horse-drawn vehicles. A special commission appointed by the governor is directed to report upon the subject of military education for boys and of creating a militia reserve. Another special commission will revise and codify the laws relating to highways. A third special commission in Massachusetts will investigate and report as to the advisability of changes in the laws relative to taxation and to draft bills carrying out their recommendations.

A special commission to be known as the terminal commission will consider the improvement of the transportation of freight in the metropolitan districts.

The large number of investigations provided for in Massachusetts caused the legislature to pass an act to provide that whenever such commissions are created, they shall report their findings together with drafts of bills.

Delaware provided for a commission to investigate the sale of milk in the State of Delaware and another commission to investigate the need of education in the agricultural, industrial, home and commercial occupations. A joint commission with the State of New Jersey will consider modifications of the laws relating to the taking of fish in the Delaware River.

Vermont provided for a commission to report in detail upon the question of conservation of flood waters. The commission is to receive propositions for the construction of storage reservoirs to be submitted to the next general assembly. Vermont also provided for the revision of the public statutes by a commissioner to be appointed by the justices of the supreme court. A special commission in Vermont will report upon the system of courts. This commission is to consist of two lawyers and three laymen. A revision of the rules of the senate and house was also entrusted to a special commission consisting of the president and secretary of the senate and the speaker and clerk of the house.

Utah provided for a commission to investigate provisions for the feeble-minded. Utah also provided for a commission to report on the subject of employer's liability and another commission to be known as the irrigation and water-rights commission to make an investigation with respect to irrigation and water-rights and to study the irrigation and water-right laws of other States.

Rhode Island created a commission of agricultural inquiry to inquire into the agricultural resources of the State and to recommend such legislation as may be necessary to encourage and assist agriculture. The commission created in 1914 to report on the condition, welfare and industrial opportunities of immigrants and aliens, was extended to January, 1916.

Pennsylvania provided for the codification of the laws relating to decedent estates and also directed the legislative reference bureau to continue its codification of the laws of the State. A commission was provided for in Pennsylvania to investigate the increase in the cost of anthracite coal alleged to be due to the tax imposed thereon. In Pennsylvania the governor, attorney-general and auditor-general are constituted a commission to be known as the economy and efficiency commission to continue the investigation of the administration of all state departments and institutions. The commission on the recording of deeds, mortgages and transfers was continued until the next session. A joint committee of the senate and house of representatives in Pennsylvania will report on the methods of legislation particularly relating to legislation concerning government of cities, boroughs and townships.

New Jersey provided for a commission to revise, simplify, arrange and consolidate the primary and election laws of the State. Another commission will investigate the question of pensions for officers and municipal employees. The committees on highways of the senate and house of New Jersey were directed to report at the next session a codification and revision of the laws relating to the improvement of public roads with state aid.

Indiana provided for a special commission to report on the subject of taxation. Another committee will report on mothers' pensions. The governor has appointed an unofficial commission to investigate the subject of the care of mental defectives. Separate commissions will revise the laws relating to public health and mining.

California provided for an investigation of taxation and of unemployment. California also provided for a commission to report on the subject of rural credits and colonization.

Idaho provided a commission to investigate the wages of women and minors.

New York authorized an investigation of taxation by a special commission.

Wisconsin created a commission to review laws relating to public lands, including forest lands, and to submit to the next legislature a bill providing for eliminating the inconsistencies in such statutes, bringing them into harmony with the decisions of the supreme court and providing for the efficient administration of such lands.

Special Municipal Corporations. In a former number of the *REVIEW* (November, 1914) a classified list, amplified by a brief description, was given of the special municipal corporations which had been created by legislative enactment during 1913. The utilization of this convenient and flexible agency for the promotion of public enterprises is so manifest that it is not surprising to discover that the legislative year, 1915, has witnessed a large number of fresh creations, although the most notable characteristics of this important political tendency, which has now fully established itself as a public habit, is in the multiplicity rather than the diversity of the corporations created. The traditional types predominate, although two or three new types, analogous in structure, but anomalous in purpose and design have made their appearance. An analysis of the purposes of these rapidly multiplying corporations supplies unequivocal evidence of the growing popularity of public ownership of service supplying utilities, and the practical expression of the gregarious and civic instincts. These corporations are of two general classes: Specific creations organized by special acts, and those authorized by general law, permissive in character. An examination of the statutes of 32 states and political jurisdictions discloses the fact that 36 general laws have been passed authorizing the creation of special municipal corporations, while 50 districts were created by special acts. Among the prevailing types, the list includes districts designed to reclaim swamp and arid lands, to facilitate the general diffusion of knowledge, to provide for the extinction of fires, to supply water for domestic, manufacturing and other purposes, to provide for the erection and maintenance of bridges, to construct and maintain roads, to prevent the encroachment of the sea on tide water lands, to provide for the disposition of sewage, to install lighting systems, to control floods and regulate rivers, to eradicate horticultural pests, and to suppress tuberculosis. Only two new types have appeared. In

Arizona and Nebraska the creation of electrical districts for the development and supply of heat and light, and in Idaho land improvement districts to clear land of natural growths, were authorized.

Irrigation Districts. A general law authorizing the organization of irrigation districts, not dissimilar to the prevailing type in the arid states, was enacted in Arizona.¹ Idaho conferred authority on irrigation districts to construct and operate electric power plants, transmission lines, and to maintain machinery for pumping water for irrigation and domestic use and to sell any surplus electric power.²

Levee and Drainage Districts. Alabama, Delaware, Indiana, Montana and Oregon authorized the creation of levee and drainage districts of the approved type.³ Wisconsin authorized the creation of sub-drainage districts within the limits of larger districts where the owners desire more thorough drainage.⁴ In Texas, the county commissioners are authorized to establish levee improvement districts on petition of a majority of the landowners affected.⁵

Flood and River Control Districts. The unparalleled floods throughout the middle west during 1913 led to the passage of four flood control laws in Indiana, the efforts of the flood control commission to secure a general act applicable to the whole State having encountered too much opposition to permit its passage. One of these acts applies to the city of Indianapolis, a second to the city of Peru and other cities of the fifth class, a third to the city of Fort Wayne and Allen County, and a fourth to cities of the 3d, 4th and 5th classes. In Indianapolis flood control works are instituted and controlled by the board of works, the plans being taken on recommendation of an engineer appointed by them. The assessments for construction are apportioned by imposing 10 per cent of the cost on the lands directly benefitted, 45 per cent on Marion County, and 45 per cent on the city of Indianapolis.⁶ In Peru a flood control district may be established by the circuit court on petition of at least 250 freeholders resident within the proposed district, unless a remonstrance, signed by at least one-half of the landowners affected, is filed in protest. The district is administered by three com-

¹ Laws Second Special Session, 1915, p. 65.

² Laws, 1915, p. 137.

³ Laws, Delaware, 1915, p. 295; laws, Montana, 1915, p. 378; laws, Alabama, 1915, p. 167; laws Oregon, 1915, p. 540; laws, Indiana, 1915, p. 208.

⁴ Laws, 1915, ch. 623.

⁵ Laws, 1915, p. 229.

⁶ Laws Indiana, 1915, p. 143.

missioners, one of whom is the mayor of the city of Peru and two of whom are appointed by the circuit court for terms of four years. Benefits and damages are assessed by three disinterested appraisers appointed by the court. A maintenance tax for the upkeep and betterment of the works may be levied.⁷ In Fort Wayne a flood control district may be established by the circuit or superior court on petition of a majority of the freeholders resident within the proposed district. The board of county commissioners and the board of public works constitute a board of flood district commissioners who administer the affairs of the district.⁸ In cities of the 3d, 4th and 5th classes, petitions for the creation of flood control districts may, on authority of the common council or the board of trustees, be filed with the circuit court. Benefits and damages are imposed by appraisers appointed by the court and the general administration of the work is in charge of a superintendent also appointed by the court.⁹ In New York river regulation districts, consisting of the whole or any integral part of the water shed of a river, for the construction of reservoirs for the regulation of the flow of the river, may be organized on petition of any landowner within the proposed district filed with the conservation commission, who have full discretion to establish districts. Districts once established are administered by a board appointed by the governor, at least two of whom must be residents of the district. The cost is borne wholly by the lands benefitted.¹⁰

Bulk-Head and Sea-Wall Districts. New Jersey authorized the governing body of any city, borough, town, township or other municipality of the State situated or bordering upon any navigable water, by general or special ordinance, to provide for the construction and maintenance of bulk-heads and other structures to protect public and private property from encroachments by water, the cost to be borne by the abutting property owners.¹¹ In Mississippi, sea-wall districts may be created by the boards of county supervisors on petition of the owners of real property likely to be affected; if the petition is signed by a majority of the landowners owning one-third of the land, or by one-third of the landowners owning a majority of the lands in the proposed district, the district is established without further proceedings; if signed by a fewer number of landowners owning a lesser amount of land, the supervisors have discretion to establish a district if they

⁷ Laws, 1915, p. 159.

⁸ Laws, 1915, p. 310.

⁹ Laws, 1915, p. 478.

¹⁰ Laws, 1915, p. 2208.

¹¹ Laws, 1915, p. 423.

deem it advisable. Sea-wall districts are administered by a board of five commissioners who are real estate owners within the district, who prepare plans for the improvement, procure estimates of cost from an engineer and assess benefits and damages. The district is a perpetual corporation for the preservation of the walls.¹²

Sanitary and Storm Sewer Districts. In Montana boards of county commissioners are authorized to create special improvement districts in thickly populated localities outside the limits of incorporated towns and cities for the purpose of constructing sanitary and storm sewers, installing lights and such other special improvements as may be petitioned for by 60 per cent of the freeholders affected.¹³

School Districts. By far the largest number of districts created is for the establishment and promotion of public schools. One aspect of this movement is for the consolidation of existing school districts. Such laws were passed in Delaware,¹⁴ Minnesota, Nebraska,¹⁵ Idaho,¹⁶ Kansas,¹⁷ Mississippi and Nevada.¹⁸ In all cases the consolidation of contiguous school districts must be approved by a majority of the electors affected. Consolidated school districts in Minnesota are designed to encourage industrial training, including the elements of agriculture, manual training and home economics; provision is made for the transportation of pupils, the expenditure of a reasonable amount for the payment of the room rent and board of pupils and the erection of dwellings for teachers. A reasonable amount of state aid is available to assist consolidated districts to erect buildings and transport pupils.¹⁹ In Mississippi separate municipal school districts may be consolidated or new districts may be created by combining municipal corporations and adjacent territory.²⁰ In Nevada, industrial school unions may be formed by the consolidation of not to exceed six school districts for the purpose of giving instruction in manual training and domestic science. Such industrial unions are administered by a joint board consisting of one trustee from each component constituency.²¹ The number of independent school districts created is extensive. Nebraska provided for the organization of county rural school districts in counties of less than 7000 inhabitants on approval of a majority of the qualified electors; the affairs of such districts are administered by a

¹² Laws, 1914, p. 361.

¹³ Laws, 1915, p. 278.

¹⁴ Laws, 1915, p. 566.

¹⁵ Laws, 1915, p. 276.

¹⁶ Laws, 1915, p. 145.

¹⁷ Laws, 1915, p. 397.

¹⁸ Laws, 1915, p. 27.

¹⁹ Laws, 1915, p. 336.

²⁰ Laws, 1914, p. 263.

²¹ Laws, 1915, p. 175.

board of education consisting of five members elected by the qualified voters without party designation; sub-districts are administered by moderators, directors and trustees.²² In Kansas, the legal electors residing in any territory containing not less than 16 square miles and comprising one or more townships or parts thereof may establish a rural high school district.²³ The largest number of independent school districts was created in Texas. These are all of the usual and standard type and present no important departures. All told, 36 such independent districts were created by as many special acts.²⁴ In Georgia one such district was created.²⁵

Road Districts. The whole of the territory of Alaska was divided into four road districts; one road commissioner is elected for each district by the qualified voters at each general election; each commissioner appoints two assistants in each precinct in which work is to be performed to assist in awarding contracts and inspecting the work before acceptance; all work is performed by contract; the revenue for road construction consists of 75 per cent of the Forest Reserve Fund.²⁶ In Mississippi, road districts may be created by the boards of county supervisors on petition of 50 per cent of the owners of real estate owning 60 per cent of the real estate, or 60 per cent of the owners owning 50 per cent of the real estate in a proposed district; an engineer is appointed by the supervisors to make a survey of the region which will be benefited by the proposed system of roads, including the character, cost, size and location. Benefits and damages are assessed by three disinterested owners of real estate of the county, and the district is continued for the maintenance of the roads constructed.²⁷ By another act of Mississippi, the boards of supervisors are authorized to create road districts by ordinance and levy taxes for the construction of roads therein; the affairs of the district are administered by a board of three commissioners elected by the supervisors and a road superintendent elected by the commissioners.²⁸ In Oregon, two or more counties may unite to create a road building district and contribute such proportion of funds as

²² Laws, 1915, p. 536.

²³ Laws, 1915, p. 406.

²⁴ Laws, First Called Session, pp. 171, 174, 180, 186, 193, 201, 205, Laws Regular Session, p. 1, 38, 50, 55, 63, 64, 66, 75, 104, 109, 116, 161, 175, 178, 196, 205, 209, 220, 224, 227, 228, 256, 269, 276, 278, 279, 283, 292.

²⁵ Laws, 1915, p. 979.

²⁶ Laws, 1915, p. 68.

²⁷ Laws, 1914, p. 221.

²⁸ Laws, 1914, p. 233.

may be agreed upon.²⁹ Virginia created the towns of Hillsboro and Waterford a separate road district.³⁰

Horticulture and Quarantine Districts. Indiana authorized the creation of horticulture and quarantine districts to prevent the spread of contagious diseases of fruit trees, to purchase spraying machines and to hire experts to inspect trees. Such districts are administered by voluntary associations, having three directors, and may not contain to exceed 20 square miles of territory.³¹

Tuberculosis Districts. In Wisconsin, tuberculosis districts consisting of not more than three counties, may be organized for the treatment of slightly advanced cases of tuberculosis; such districts are administered by a board of trustees consisting of one member from each county, elected by the joint county boards; the cost of maintenance is paid by the counties in proportion to the amount of taxable property.³²

Fire and Water Districts. Fire and water districts are common in New England, and six new districts were created in 1915 and the territory of others extended. That part of the town of Bourne known as Monument Beach was authorized to organize as a fire district if approved by two-thirds of the resident electors within two years after the passage of the act. The district is authorized to purchase hose, hose carriages and other apparatus to extinguish fires and install a fire-hydrant service. The district is to be administered by a prudential committee who are authorized to employ policemen and watchmen to protect property and patrol the streets. Taxes are levied at meetings called for that purpose.³³ The Norton Fire District, previously created, was authorized to extend its limits by the annexation of contiguous territory if approved by two-thirds of the resident voters affected.³⁴ Rhode Island authorized the creation of the Pleasant View Beach Fire District, consisting of a part of the town of Westerly, if the establishment be approved by a majority of the interested, qualified electors. The officers who administer the affairs of the district consist of a moderator, a clerk, a treasurer, three assessors and one collector of taxes, elected annually; five wardens, engineers, assistant engineers and other officers and committees may also be elected. The purpose of the district is to provide for the extinction of fires, to supply water for manufacturing and domestic purposes and to construct and maintain side-

²⁹ Laws, 1915, p. 252.

³⁰ Laws, 1914, p. 196.

³¹ Laws, 1915, p. 557.

³² Laws, 1915, ch. 227.

³³ Special Acts, Massachusetts., 1915, p. 207.

³⁴ Ibid., p. 208.

walks.³⁵ The inhabitants of a portion of the town of Barnstable, Massachusetts, were authorized to organize the South Fire and Water District, if the provisions of the act are accepted by a majority of the resident voters at any time within three years after its passage. Besides supplying water to extinguish fires and for domestic purposes, the district is also authorized to light its streets.³⁶ The Mansfield Water Supply District was authorized, on approval of two-thirds of the legal voters, to extend its limits by the incorporation of contiguous territory.³⁷ Maine authorized the creation of four water districts, Southwest Harbor,³⁸ Bath,³⁹ Hartland⁴⁰ and Anson,⁴¹ upon the approval of a majority or two-thirds of the resident qualified electors. The administration of the district in each case is intrusted to a board of three trustees elected by the qualified voters or chosen by the municipal authorities who are authorized to fix the water rates and issue notes or bonds for the payment of any indebtedness incurred. The Southwest Harbor, Bath and Hartland water districts are authorized to purchase private plants now in operation and the Anson district is given equal opportunity to obtain a water supply with a private plant already installed.

Lighting Districts. Maine authorized the creation of the Wells Beach Lighting District when the act authorizing its creation is accepted by a majority of the voters affected. The district when organized is authorized to install and maintain the necessary apparatus to light all roads, streets and ways within its limits and to contract with any person or corporation to furnish light. Officers are to be elected annually and consist of a clerk, three assessors, a treasurer and collector and such other officers as the by-laws may provide for.⁴² Montana authorized the creation of special improvement districts for lighting streets. The council of any city or town may create a special improvement districts embracing any street or streets or public highway and property abutting thereon for the purpose of lighting such streets. Not more than three-fourths nor less than one-fourth of the cost of installation and maintenance is borne by the property owners within the district; the re-

³⁵ Session Laws, 1915, p. 445.

³⁶ Special Acts, Massachusetts, 1915, p. 105.

³⁷ Special Acts, Massachusetts, 1915, p. 234.

³⁸ Special Laws, Maine, 1915, p. 509.

³⁹ Ibid., p. 602.

⁴⁰ Ibid., p. 612.

⁴¹ Ibid., p. 620.

⁴² Special Laws, Maine, 1915, p. 626.

mainder of the cost is borne by the city at large.⁴³ In Kansas, on petition of a majority of the property owners affected, any city of the second class having a population of 1500-2000 and an assessed valuation of \$1,400,000, may create special illuminating districts and provide lights in addition to the regular city system. The cost of installation and maintenance is borne by the property owners affected.⁴⁴

Bridge Districts. Maine authorized the creation of the Rumford and Mexico Bridge District, including territory situated in the towns of Mexico and Rumford, if approved by a majority of the legal voters of the two towns. The district, when organized, is empowered to purchase the toll bridge between the two towns now owned by a private company. The management of the bridge district is vested in a board of three trustees, two of whom are to be chosen by the assessors of Rumford Falls Village and one by the municipal officers of Mexico; the trustees have authority to establish toll rates, borrow money and issue interest bearing negotiable notes.⁴⁵

Stone and Gravel Districts. Without constituting a district in the strict sense of the term, adjoining townships in Ohio, if authorized by a vote of the qualified electors therein, may combine to purchase stone or gravel and the necessary operating machinery. A manager is selected by the trustees of all the townships interested.⁴⁶

Two new types of special municipal corporations have made their appearance this year, although structurally they are not dissimilar to existing types. These new types include electrical districts to supply light and power, authorized in Arizona and Nebraska, and special improvement districts for the clearing of land which may be rendered tillable by the removal of sagebrush, stone, timber, stumps, roots, logs, brush and débris, authorized in Idaho.

Electrical Districts. In Arizona, the proposition of forming an electrical district is submitted to the interested, qualified electors and landowners for adoption or rejection. The purpose of such districts is to construct, operate and maintain lighting, heating and power generating and distributing agencies of either gas or electrical energy, and for that purpose authority is given to use all roads, streets and thoroughfares within the district. The business affairs of such districts are administered by seven trustees, elected by the qualified voters of the district. For construction, maintenance, repairs, extensions and operations, the trustees fix a monthly service charge on the users of

⁴³ Laws, 1915, p. 351.

⁴⁴ Laws, 1915, p. 167.

⁴⁵ Special Laws, Maine, 1915, p. 520.

⁴⁶ Laws, 1915, p. 133.

electricity not to exceed ten cents per kilowat hour for lighting, nor more than eight cents per kilowat hour for power and domestic uses other than lighting. If the rate so fixed does not yield sufficient revenue to meet the necessary expenses, the deficit is made up by a tax on all real estate within the district.⁴⁷ In Nebraska, electrical districts may be created on recommendation of the state board of irrigation, highways and drainage, and if approved by a majority of the electors affected. The affairs of the district are administered by three directors elected by the qualified resident voters. Within the larger district, directors are authorized to create electrical improvement districts of two classes: Public electrical improvement districts, composed of a municipality and one or more contiguous precincts outside the municipality; and private electrical improvement districts, composed of the premises of 20 or more landowners susceptible of being supplied with electrical energy by one common distribution line. Public electrical improvement districts are administered by three commissioners elected by the resident voters. Private electrical improvement districts are created on petition of 20 or more landowners and the cost of installing the necessary apparatus may in no case exceed 10 per cent of the value of the land in the proposed sub-district. The directors of the district fix the rates of service for each sub-district, which in all cases is furnished at cost. Any electrical district may be progressively enlarged by the annexation of contiguous territory.⁴⁸

Land Improvement Districts. Land improvement districts may be created in Idaho by the district courts on petition of all the interested landowners. At the time of decreeing the creation of an improvement district, the court appoints a commissioner who must be an experienced, competent, licensed surveyor. The commissioner makes the necessary surveys, prepares a plat, and estimates the cost of clearing the land within the district. All by-products are the property of the district. When the land is cleared it may be apportioned into suitable tracts for sale.⁴⁹

CHARLES KETTLEBOROUGH.

Indiana Bureau of Legislative Information.

Budgetary Laws. The very comprehensive budgetary provisions of the New York constitution have been anticipated by statute in several States in 1915. Washington, Vermont, Nebraska, North Dakota and Wisconsin adopted legislation on the subject.

⁴⁷ Laws Regular Session, 1915, p. 97.

⁴⁸ Laws, 1915, p. 273.

⁴⁹ Laws, 1915, p. 443.

In Washington, chapter 126, p. 159, it is enacted that on or before October 15 in even-numbered years the head of each department and institution shall transmit to the board of finance (consisting of the governor, treasurer and auditor) itemized estimates for the ensuing biennium. The auditor shall prepare a statement of the appropriations of the current biennium with the amounts expended to September 30, and a statement of the appropriations for the two preceding bienniums. With these he shall present to the board of finance an estimate of the revenues of the ensuing biennium. Printed copies of these items of information shall be sent to all members-elect at least fifteen days before the legislature convenes.

The Vermont law, No. 26, p. 87, goes somewhat further into detail. The governor, auditor, treasurer, chairman of the finance committee of the senate, the chairmen of the ways and means and the appropriations committees of the house and the purchasing agent are constituted a committee on budget. The head of each department and institution is required during October in the even-numbered years to file a statement of the appropriations to his department or institution for the two preceding and the current bienniums together with the expenditures to date and requests for the next biennium. The statements are to be set forth under prescribed functional heads. Likewise, any person, institution or corporation proposing to request an appropriation or prefer a claim is required to present a statement to the committee, otherwise no such claim or request may come before the legislature. The committee is to prepare a statement containing the foregoing information together with a statement of the revenues of the current and two preceding bienniums and of unexpended balances and prospective revenues for the ensuing biennium. The statement must be sent to members-elect by December 1st and to each town clerk for public reference. The budget committee of the incoming administration may amend the estimates and must present to the legislature a consolidated statement of income and expenditures for three preceding bienniums and estimates for the ensuing period. At the end of the time allotted for presenting new bills, the committee is directed to make a statement of all appropriations carried in such bills together with their own recommendations therefor. After adding to the consolidated statement all appropriations carried in miscellaneous bills, the committee is to present a final appropriation bill.

The committee is empowered to examine any department or institution with a view to suggesting greater efficiency and economy and

observe whether expenditures are kept within appropriations. Emergency expenditures may be made by the committee and included in the next budget.

The Nebraska legislature enacted a law providing a "budget system," (chapter 229, p. 532) by which the governor is made the chief budget officer. It is made his duty to prepare and transmit to the legislature a "detailed and summarized estimate" of the State's revenues and expenditures for the ensuing biennium as recommended by him and his reasons for recommending the same if any item varies from that of the last biennium. Items which must appear in such estimate are: Total valuation of property in the State, the state debt and interest charges, receipts and expenditures for the preceding biennium, estimated revenues of the ensuing biennium classified by sources, expenditures for the preceding biennium classified by departments and a detailed statement of the estimates for the ensuing biennium classified as expenditures for permanent improvements, salaries, maintenance and new undertakings. The governor's estimates are to be printed and available to members, citizens and the press at the convening of the legislature. To assist the public in comprehending the financial status of the State, the auditor is directed to prepare a clear and condensed statement at the close of the fiscal years showing the expenditure of each department and activity, in form for general circulation.

The state budget board of North Dakota consists of the governor, the state auditor, the attorney general and the chairmen of the appropriations committees of the house and senate of the preceding legislative assembly. The board is authorized to employ the necessary clerks, stenographers and expert accountants. Not later than August 1st of each year preceding a session of the legislative assembly, the state auditor obtains from each board, commission or department supported wholly or partly by public revenue an itemized statement of the amount of money necessary for the proper maintenance, extension or improvement of the department. The state budget board meets on the third Tuesday of November of the year preceding a legislative session to consider the estimates submitted. The head of any board, commission or department is authorized to appear before the board in defense of his estimates; members of the board may visit any institution to ascertain its financial needs; and public hearings may be had to adjust the various items of the budget. The budget so prepared is submitted to the general assembly, accompanied by explanatory statements, not later than the tenth day of the session.

The budget must likewise contain estimates of the amount of revenue necessary to meet the accruing interest on the public debt and to recruit the sinking fund; an estimate of the revenues which the State will probably receive during the ensuing biennium; and the amount of all unexpended balances.⁵⁰

Wisconsin provided a budget system for cities of the first class. The heads of departments are required to file with the city comptroller a detailed estimate of their financial needs, including improvements, during the ensuing year. The city board of estimates consist of the mayor, the president of the common council, the comptroller, the city treasurer, the city attorney, the commissioner of public works, and the members of the finance committee of the common council. The board meets annually on August 1. The board of estimates prepares a budget from the estimates so submitted and submits the same to the common council on or before September 15 of each year. At least one public hearing is had on the proposed budget before its final adoption. The common council by an affirmative vote of a majority of the aldermen may make changes in the proposed budget. The mayor may veto separate items of the budget.⁵¹

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⁵⁰ Laws 1915, p. 67.

⁵¹ Laws 1915, ch. 327.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The eleventh annual meeting of the American Political Science Association will be held in Washington, D. C., December 28 to 31. The headquarters will be at the Shoreham Hotel. The opening session on the evening of December 28, which will be a joint one with the American Association for Labor Legislation, will be devoted to the presidential addresses of Prof. Ernst Freund, and Prof. Henry R. Seager. The topics of the other sessions will be: Standardization and governmental efficiency; administrative tribunals; readjustments that will make toward peace (joint session with the American Society of International Law); improvement in the technique of direct legislation; and the growth of nationalism in the British empire. There will also be round table conferences on methods of instruction in political science, political scientists and practical governmental work, statute drafting, and the amending procedure of the federal Constitution.

Programs giving in detail the titles of papers to be read, information regarding hotel accommodations, railways, etc., will be mailed to members of the Association early in December.

Prof. Léon Dupriez, of the University of Louvain, gave the Godkin lectures at Harvard University during April and May on the subject of *La Représentation Proportionnelle en Belgique*.

Prof. J. A. Fairlie has resumed charge of his courses at the University of Illinois after a leave of absence of a year and a half, during which he was engaged in directing the work of the Illinois efficiency and economy committee.

Dr. J. M. Mathews, of the University of Illinois, has been promoted to an assistant professorship of political science in that institution.

Mr. Robert Porter Lane, M.A., University of Michigan, has been appointed to an instructorship in political science in that university.

Mr. Howard McDonald, M.A., University of Michigan, has been appointed to the chair of economics and political science of Muskingum College, Ohio.

Dr. Mitchell B. Garrett, recently instructor in history at the University of Michigan, has been called to the chair of history and political science at St. Lawrence University.

C. C. Kochenderfer, assistant in the political science department at the University of Wisconsin, has accepted a position as instructor at Cornell University for the coming year.

Assist. Prof. A. B. Hall has been advanced to the rank of associate professor of political science at the University of Wisconsin.

Dr. Paul S. Reinsch, United States minister to China, gave courses in the history of political thought and international law in the summer session at the University of Wisconsin. W. B. Webster, of the University of Wisconsin, has been appointed as Secretary to Dr. Paul S. Reinsch at Peking, China.

Dr. T. S. Adams, who has been a member of the Wisconsin tax commission for the last five years, has accepted an appointment as professor in the department of political science at Cornell.

Mr. Percival W. Viesselman has been appointed a teaching assistant in the department of political science for the ensuing year at the University of Minnesota.

Dr. J. S. Young, professor of political science at the University of Minnesota, was recently appointed director of the summer session.

Mr. Rockwell C. Journey has been appointed instructor in political science in the University of Missouri. Mr. Journey will also have charge of the municipal reference bureau which has just been established in the extension division of the University of Missouri.

Jennings C. Wise, of the Richmond, Va., bar, formerly professor of political science at the Virginia Military Institute, is the author of a volume dealing with American political theories. It will soon be published by Putnam.

Dr. Thomas W. Page is directing several new courses that have been added to the curriculum of the department of economics and political science at the University of Virginia. They deal chiefly with problems of public finance. The summer school of the University of Virginia experimented last summer with courses in South American government. They were highly successful and will be added to the regular courses.

Pending the appointment of a professor of political science at the University of Alabama, Prof. Lee Bidgood, head of the department of economics at that institution, is giving an introductory course in American government, supplemented by brief courses in comparative government.

Dr. R. C. McCrane has been elected instructor in history at the University of Cincinnati. Dr. McCrane is an alumnus of the University of Cincinnati, who has done graduate work at the University of Chicago and at the University of Wisconsin.

Prof. John K. Towles, who was professor of economics at Kenyon College, has accepted the professorship of commerce in the College of Commerce, University of Cincinnati.

Dr. Dexter Perkins, who has been instructor in history, University of Cincinnati, during the past year, has accepted an instructorship in history at the University of Rochester.

Dr. L. D. Upson, who has been director of the bureau of municipal research, Dayton, O., has resigned to accept a position as secretary of the board of directors of the National Cash Register Company at Dayton. Mr. C. E. Rightor has been chosen to succeed Dr. Upson.

Amherst College has introduced in the freshman year a course which is intended to serve as a general introduction to the field of the social sciences. In the first semester the course lays particular emphasis on

social and political institutions and problems and is under the direction of Raymond G. Gettell, professor of political science. In the second semester chief emphasis is laid on economic institutions and problems, and the course is under the direction of Walter H. Hamilton, recently appointed professor of economics.

Mr. Edwin D. Dickinson, for the past two years instructor in political science in Dartmouth College, has been promoted to an assistant professorship in that institution.

Mr. Leonard D. White, Dartmouth '14, and recently graduate student at the University of Chicago, has been appointed instructor in political science in Clark College.

Prof. Philip Marshall Brown, A.M., has been appointed professor of international law at Princeton University, to fill the vacancy created by the resignation of Prof. Edward Elliott.

Dr. Frank E. Horack, of the State University of Iowa, has been promoted from the position of assistant professor of political science to professor of political science. At the same institution Mr. Jacob Van der Zee has been promoted from the position of instructor in political science to assistant professor of political science.

The State Historical Society of Iowa has issued a pocket edition of the *Constitution of Iowa*, with historical introduction and index by Benj. F. Shambaugh.

The October number of *The Iowa Journal of History and Politics* contains a comprehensive review of the legislation of the thirty-sixth general assembly of Iowa by Dr. F. E. Horack.

New courses offered by the department of political science at the State University of Iowa during the ensuing year are South American republics, Roman law, and the common law.

The second annual meeting of the Illinois Municipal League was held at the University of Illinois on November 2 and 3. Mr. R. E. Cushman, of the department of political science in the University, read a paper on "City Planning and the Courts."

The work in political science and economics at the Virginia Military Institute, under the direction of Prof. W. M. Hunley, has been enlarged to include the whole field covered in the usual undergraduate courses. It is planned to add to the department courses in sociology either in the second semester this session or at the opening of next session. The Institute's library of political science and economics has been enriched by the addition of several hundred new volumes.

The New Hampshire legislature at its last session made provision for an investigation of towns, cities, and counties in New Hampshire with respect to their accounting systems, indebtedness and disposition of trust funds. The state tax commission was instructed to make such investigation and to report its findings to the next legislature. An account of the work that has been done will be included in the tax commission's report for 1915.

A meeting for the organization of a municipal league of the officials of New Hampshire cities is scheduled for December 8 and 9 in connection with the annual meeting of the New Hampshire Association of Assessors to be held in Manchester.

The annual conference on legal and social philosophy will be held in New York City, November 20 to 27, at the College of the City of New York. The general topic to be discussed will be the enforcement of law, including such subjects as the general significance of force, violence and compulsion in the organization of modern life, the sanctions of private, commercial, constitutional, and international law, and the general problem how social ideals can be made controlling in the field of social conduct.

The annual meeting of the Association of Urban Universities will be held in Cincinnati, November 15 to 17, 1915. This association, founded last year, purposes to study problems peculiar to universities, private or public, located in and serving municipal communities. This year, on invitation of the president of the association, the University of Cincinnati will be the meeting place, and the subject for discussion will be the mutual relation of the departments of city administration to the university, and the ways and means of training men and women for municipal, state, and national positions. Among those who will present papers are Mayor Frederick S. Spiegel of Cincinnati, Henry

Bruère, city chamberlain of New York, late of the bureau of municipal research, and Prof. Leon Marshall, dean of the College of Commerce, University of Chicago. The officers of the association are: President, Charles Wm. Dabney, University of Cincinnati; vice-president; Dean Everett W. Lord, Boston University; secretary-treasurer, Walter E. Clark, College of the City of New York.

The preliminary program of the Second Pan-American Scientific Congress, to be held in Washington, December 27, 1915, to January 8, 1916, has been published by the Department of State. Section VI of the congress is to deal with international law, public law, and jurisprudence, and Section IX with transportation, commerce, finance and taxation. Under Section VI such problems will be considered as the relation of international law to national law in American countries, the specific American problems of international law, the possible codification of international law, judicial organization and election systems and methods. Under Section IX will be discussed questions relating to international railways, internal railway and waterway development, foreign trade among American countries, investments of foreign capital and a common monetary standard.

The annual meeting of the Academy of Political Science, held in New York City, November 12 to 13, was devoted to a discussion of present problems relating to the American mercantile marine.

The World Court is the title of a new monthly magazine, the first number of which appeared in August. It supplants the magazine formerly published by the International Peace Forum, entitled *The Peace Forum*, and has for its purpose the advancement of the project of a world court for the settlement of controversies between states. The subscription price is one dollar. Dr. John Wesley Hill is the editor, and the International Peace Forum the publishers.

The World Peace Foundation is issuing a separate series of pamphlets under the title of *Official Documents Concerning Neutral and Belligerent Rights* issued since August 4, 1914. Four such pamphlets have already been issued dealing with "Neutrality proclaimed and explained," "War zones," the *Wilhelmina* and *Frye* cases and "American trade in munitions of war."

The H. W. Wilson Company of White Plains, New York, have issued an announcement of a Public Affairs Information Service which is a coöperative organization for classifying and disseminating information upon all questions of public significance. The information service was first organized and conducted by Mr. John A. Lapp, who is in charge of the Indiana bureau of legislative information, and it has now been reorganized and its scope enlarged. The service acts as a clearing house for information on public affairs by securing and listing publications of all kinds, forwarding free material to coöperators, furnishing copies of MS. material, etc. It issues a weekly bulletin together with cumulated editions every two months and yearly. The bulletins attempt to cover state legislative investigations and reports on state problems, court decisions touching upon the constitutionality of laws and ordinances, and in addition a wide range of studies and investigations by organizations and associations public and private. Coöperators contribute \$100 per annum to the support of the service. Subscription to the bi-monthly and annual cumulated editions of the bulletin alone is \$25 per annum.

The committee on organization of the proposed society for the promotion of training for public service has issued a pamphlet containing a statement of the aims and purposes of the society together with suggestions as to the manner in which the society may be organized. The proposed society is the outcome of the interest in the improvement of public administration created by the committee on practical training for public service of the American Political Science Association. Under the auspices of the society was held the second national conference on universities and public service.

Special Libraries contains in its issue for September a "List of References on Government Aid to Farmers and Immigrants," compiled under the direction of the Library of Congress. The list is limited to material bearing on direct government aid in the form of grants of land, advances of money or supplies, state supervision of coöperative enterprises, etc., and excludes such forms of state aid as farmers' institutes, agricultural education, etc. The works of foreign writers figure prominently in the list.

The second Heft of volume IX of the *Zeitschrift für Völkerrecht* is devoted to a discussion by a score of German publicists of the questions of international right raised by the sinking of the *Lusitania*.

The July number of the *Annals of the American Academy of Political and Social Science* bears the title "America's Interests as Affected by the European War," the several contributions being grouped under the heads: America's International Trade as Affected by the War; The Relations of the United States with Central and South America as Affected by the War; America's Financial Position as Affected by the War; American Neutrality and the War.

The September number of the same publication is entitled "America's Interests after the European War," the group titles being: America's Industries as Affected by the War, The Stability and Development in America's International Trade, American Industrial Supremacy through Efficiency in Business Organization, Industrial Conservation through World Peace.

The National Short Ballot Association has issued a reprint in abridged form of the address delivered by Mr. Root before the New York Constitutional Convention on August 30, 1915, in support of the resolution to reduce the number of elective state officers and combine the 152 state departments into 17. *The Short Ballot Bulletin* for August comments on the adoption of the resolution and regards New York as the pivotal State in the movement, so that in this respect the short ballot in New York becomes a national issue.

Representation, the journal of the Proportional Representation Society, contains in its latest number, June, 1915, a review of Mr. Dicey's criticism of proportional representation in the new edition of his *Law of the Constitution*. Mr. Dicey admits that the House of Commons often fails to represent accurately the opinion of the electorate and that a system of proportional representation would reflect this opinion more exactly, but he is doubtful as to the desirability of having the House of Commons reflect every opinion of the electorate in proportion to its supporters. In reply Mr. J. Fischer Williams points out that there is no ground for thinking that "fads" would control the votes of any large number of persons or that election agents would be strengthened by the proposed system or that log-rolling would increase. In the same number Frederick Zeuthen contributes a description of proportional representation under the new Danish constitution.

The Alliance Française is publishing a bi-weekly bulletin which presents a brief commentary on current events relating to the war in

Europe. A summary of the military situation is first given, followed by selections from foreign journals and private correspondence. Some of the selections are of considerable interest, such as the letter of M. Vandervelde to the German Socialist, Schiedemann, in No. 15, the comment on the position of the German government towards the Socialist repudiation of the plan of annexing conquered territory, and the description of the treatment of the Slavonic provinces by the Austro-Hungarian monarchy.

The publicity department of the National Wholesale Liquor Dealers' Association of America has issued *The Anti-Prohibition Manual* which contains among much that is useless some convenient statistical tables relating to prohibition laws and their connection with the welfare of the state. Some of the inferences from facts are amusing. Without considering other circumstances, dry and wet States are compared in respect to the death rate, crime, pauperism, divorce and savings accounts. It is gravely asserted that "the prohibition Turks trail at the tail end of civilization" and the explanation is apparently at hand. The pamphlet closes with an analysis of the arguments presented in congress against the adoption of the Hobson resolution.

The Report of the Committee on the Federal Income Tax, submitted to the ninth annual conference of the National Tax Association held on August 10 to 14, 1915, presents a careful analysis of the provisions of the income tax act and offers detailed suggestions in aid of a constructive reform of the law. The committee points out the injustice of forcing corporations to perform the work of collection which properly belongs to the government, a task which costs from 10 per cent to 20 per cent of the amount turned over to the government, and recommends that a system of information at the source should be introduced, the tax itself being collected from the individual. Further recommendations are made with respect to deductions for losses and depreciation of property, the lowering of the specific exemption from \$3000 to \$2000, methods of accounting, etc.

The April number of *Texas Municipalities*, the quarterly magazine published by the League of Texas Municipalities, of which Dr. H. G. James of the University of Texas is secretary-treasurer, contains an interesting article on the "Commission Form of Government" by Hon. Ben Campbell, mayor of Houston, Texas, in which the needs

of city government are discussed in a familiar and popular style. The same number contains brief articles on the "Origin and Theory of the City Manager Plan," by H. G. James, and on the "Need of Civil Service Merit Rules in Texas Cities" by P. H. Sheldon.

The committee for immigrants in America is publishing a quarterly magazine, *The Immigrants in America Review* with the object of interesting American readers in the assimilation of immigrants into American industries and American communities. The *Review* is not concerned with either restriction or non-restriction of immigration; its wishes to show that if immigrants are admitted into the country the means of assimilation must be put within their reach. It hopes to act as a clearing house for all the immigration work being done in the country and will keep in touch with all governmental, industrial or social efforts in the interest of immigrants, and with legal decisions affecting them. The editor of the *Review* is Frances A. Kellar.

The University of Texas has issued further bulletins in the Municipal Research Series. No. 8 presents a "Model Health Code for Texas Cities," by Robert M. Jameson, secretary of the Bureau of Municipal Research and Reference. The code defines the powers and duties of health officers and prescribes regulations relating to food, drugs, sewage, animals, laundries, garbage, and interments. It is followed by a select list of references. No. 9 of the series concerns "Street Paving in Texas" and is edited by Edward T. Paxton. No. 10 deals with "Public Service Rates in Texas Cities," by E. T. Paxton, and No. 11 contains an article on "University Training for Municipal Administration," by Herman G. James, director of the Bureau.

The economy and efficiency committee of the State of Illinois has issued further pamphlets containing a *Report on the Military Department of the State of Illinois*, by Quincy Wright, a *Report on Civil Service Laws*, by A. C. Hanford, a *Report on the Secretary of State and Law Officers*, a *Report on Economy and Efficiency Commissions in Other States*, by A. C. Hanford, a *Report on Fire Insurance Rates in Illinois*, by Maurice H. Robinson, a *Report on Supervision of Corporations and Related Business*, by Maurice H. Robinson, a *Report on State Administration of Public Works, Parks and Buildings*, by C. O. Gardner, and a *Report on Accounting Administration for Correctional Institutions*, by Spurgeon Bell.

The Annual Report of the Training School for Public Service conducted by the bureau of municipal research of New York contains a description of the purposes of the school, a list of present openings in public service, an explanation of conditions of admission to the school and a detailed program of instruction. The Report calls attention to the special committee appointed by the American Political Science Association at its meeting in 1912 to investigate opportunities for laboratory work for students in political science, and to the national conference on universities and public service held in New York in May, 1914.

In an address on the Sherman Law delivered before the Economic Club of Philadelphia, May 22, 1915, Mr. George W. Perkins followed up his earlier address on the *Outlook of Prosperity* delivered before the Economic Club of New York and in addition to showing where and why the Sherman Law has failed attempts to offer some constructive suggestions. He advocates the establishment by the federal government of a competent business court or commission to which corporations might go to obtain their charters and by which they would be called to account for violations of the law. Such violations would be punished with imprisonment of the individuals concerned without dissolution of the corporation, as is the case with national banks. The address is both instructive and suggestive, though Mr. Perkins does not make it quite clear how we are to expect the requisite good judgment and consistency from this business court, which is to possess both legislative and judicial powers, when we are unable to find such qualities in the decisions of the Federal Supreme Court.

In an able address before the Union League of Philadelphia, on March 23, 1915, Mr. Elihu Root analyses the change in the relation of business towards politics within the last two decades. The business men who elected President McKinley are now under the suspicion of a government representing the west and the south. Supervision of business is the characteristic of the day and supervision by people of the parts of the country which know little of the business of the country. Therein lies the reason for the stagnation, timidity, and unwillingness of American enterprise today. The conclusion he draws is that business must make it clear to the country that it is misunderstood, and an effort must be made to counteract the tendency towards bureaucracy. There is, however, no reference to certain exposures of the methods of big

business as possibly affording a basis for popular mistrust of industrial corporations. *Timeo Danaos* has its part in government as well as in the affairs of armies.

A recent volume in the Municipal League series is entitled *Lower Living Costs in Cities*, by Clyde L. King (New York. D. Appleton and Company. 1915. Pp. 348). The author contends that "urban living costs are what we make them." He therefore opposes laissez faire methods in the modern city and advocates community control of the factors making for increased costs. His analysis of these factors is keen and the remedies suggested present a comprehensive and coherent program of action.

The Prize Code of the German Empire as in Force July 1, 1915 has been translated and edited by C. H. Huberich and Richard King (New York: Baker, Voorhis and Company. 1915. Pp. 200). The original German text is also given, together with the provisions of the treaties between the United States and Germany relating to prize law and the text of the War Zone proclamation of February 4, 1915 and the memorial by which it was accompanied. There also is a sketch of the development of German prize law since the Prussian Code of 1794, and a discussion of the present binding force of the Declaration of Paris, the Hague Conventions, and the treaties of 1785, 1799 and 1828 between this country and Prussia. The work will thus be of great value to all interested in understanding the authoritative views of Germany with reference to maritime seizures or destructions.

Judicial Administration is the title of an address delivered by Dean Thayer of the Harvard Law School before the Law Association of Philadelphia on January 25, 1915. It is a careful and illuminating discussion of the character of jury trial and of the position of the trial judge, and the criticism of the *Slocum* case (228 U. S. 364) is followed by suggestions as to the manner in which the constitutional difficulty may be evaded. The Law Association has also published an address on the *Regulation of Rates of Common Carriers by the Federal Government Alone*, by W. A. Glasgow, Jr., and the *Uniform Partnership Act*, by Samuel Williston, professor of law at Harvard University.

In a brief pamphlet entitled *Commercial Treaties of the United States*, published by the National Foreign Trade Council, Mr. Carman F.

Randolph of the New York Bar reviews the commercial treaties in force and presents an analysis of their more significant provisions, among them being the recognition of private corporations as international traders, the "most favored nation" clause, the recognition of national vessels, reciprocal protection for trade marks, etc., and provisions regarding commerce during war. The National Foreign Trade Council was created in 1914 and has for its general object "to coördinate the foreign trade activities of the nation." It is non-political and non-partisan and its functions are investigatory and advisory. From time to time it publicly reports upon problems arising in oversea commerce.

Labor in Politics is the title of a booklet of some two hundred pages by Robert Hunter published by the Socialist Party at their headquarters in Chicago. In the chapter on the "Politics of the American Federation of Labor" the author shows that the Federation in spite of its motto, "no politics in the unions" has not only entered the arena of politics in order to secure legislation favorable to the laborer, but has allied itself through its officers with the Democratic Party. "Some Methods of Combating Labor" discusses the revelations made by Martin Mulhall in 1913 of the steps taken by the National Association of Manufacturers to defeat the cause of labor by influencing the laborers against their own interests. "Labor and the Capitalist Parties" discusses the danger to the labor movement in the endeavor on the part of the Federation to obtain reforms through subservience to the great political parties. "The Politics of Labor in Europe" offers a comparison with its methods in America, and the discussion closes with suggestions for future action.

In a brief pamphlet entitled *A Conference of Neutral States* issued by the World Peace Foundation Mr. Charles H. Levermore urges the convocation of a conference of neutral states which should remain in session during the duration of the war with the object of defining the rights of neutral states and providing for their effective defense. The foundation is also announcing the publication in its serial pamphlets of all the official documents concerning neutral rights and freedom of commerce and navigation that have passed between this country and belligerent nations since August 1, 1914. Three of these pamphlets have already been published and two more will be ready in October. The five pamphlets will cover in all about two hundred pages and as

new material appears the foundation will publish it in future serial issues.

M. Jacques Flach, professor of the history of comparative legislation at the Collège de France has published a small volume upon the psychology of nationalism under the title, *La Formation de l'Esprit public allemand* (Paris, Librairie Recrueil Sirey, pp. 132). His object is to show the forces in German history which have determined Germany's conduct in the present war, to inquire how far that conduct was accidental and how far inherent, and to distinguish between individual and collective responsibility. In answer to those who divide public opinion in Germany into two tendencies, the one industrial and liberal, the other militarist and absolutist, the author asserts that these divergencies are slight in comparison of the unity of public spirit brought about by systematic prussification. The chapter dealing with philosophic doctrines is particularly concerned with the influence of Hegel, and it is interesting to note how closely his theory of international law (!) coincides with that of Treitschke and Bernhardi. Occasionally the author weakens his argument by a reference to the Teuton character in times too remote to have a bearing on the present. In an appendix are quoted selections from the writings of Benjamin Constant (1814) and Edgard Quinet (1832, 1842) predicting the development of the Prussian character into its present form.

Prof. Herman G. James, who has been prominently identified with municipal reform in Texas as director of the Bureau of Municipal Research and Reference, has published *A Handbook of Civic Improvement* (119 pp.) which departs from the familiar path of municipal literature in that it concerns itself almost entirely with municipal functions instead of municipal organization, and attempts to make the information contained in the text available for purposes of civic improvement. This is done by adding at the end of each chapter a question sheet which can be used as the basis of a city survey in that particular field. The different functions discussed are "Public Health," "Public Safety," "Public Education," "Public Morals," "Social Welfare," and "City Planning."

In a pamphlet of 38 pages, entitled *La Idea del Estado y la Guerra Europea* (Madrid, Libreria General de Victoriano Saurez), Adolfo Posada, of the faculty of law of the University of Madrid and the

author of a number of works on various branches of public law, distinguishes between the two conflicting aspects of the state, whether as a coöperative human institution or as a force which proceeds from without and dominates over its subjects, and discusses the modern imperialistic nationalism, the "revised" Machiavellianism of Treitschke and Bernhardi. The remedy for the religion of war and for national aggressiveness he finds in a true democracy possessing a juridical conscience capable of ruling itself without dominating over others.

The *Debaters' Handbook Series*, which has furnished a number of very useful volumes dealing with present political and economic questions, has been supplemented by the *Handbook Series* of which two titles have appeared, "European War" and "Agricultural Credit." The new volumes, while abandoning the affirmative and negative classification of articles in the *Debaters' Series*, preserve the plan of selecting representative articles from various sources, mostly from current periodicals. "Agricultural Credit" is edited by Edna D. Bullock, who in a brief introduction expresses the opinion that the "bills now pending before Congress do not promise to crystallize into law soon" owing to the fact that it seems "difficult to convince the American legislator that conditions in this country are essentially similar" to those described in the report of the commission which was sent to Europe in the summer of 1913 to study the rural credit systems in operation there. Myron T. Herrick, in an article "The Farmer and Finance" expresses a hopeful view of the possibility of introducing a system of credit similar to that of the Raffeisen banks in Germany and the Credit Foncier in France, adapted, however, to the peculiar conditions of American farming. How these conditions differ from those prevailing in Europe is well pointed out in the article "Rural Credit" by Marion S. Lahman, who represented Oklahoma upon the European Commission, and who contrasts the community life of the European farmer, and his permanent location in one place, with the widely scattered farm houses of America and the shifting population. President Taft's letter to the governors of the states in advocacy of agricultural credit legislation is printed in full. The articles are preceded by a bibliography of general references and magazine articles.

The New York Times Review of Books forming section five of the issue of October 10, 1915, contains an excellent bibliography of books upon

the European war published since the edition of April 18, 1915. In all 262 titles are included, showing a marked increase in the number of books during the past five months. Books and pamphlets dealing with the origin of the war and the nation or nations responsible for it have in general given way to books seeking to throw light upon the more remote or indirect causes. *Imperial Germany and the Industrial Revolution* by Thorstein Veblen (New York, Macmillan Company) shows the part played by industrial success as a force behind militarism. *Socialized Germany* by Frederic C. Howe (New York, Scribners' Sons) exposes the social and industrial methods which produced the efficiency of Germany and points out that America must adopt some of these methods if she is to compete with Germany after the war. *German Philosophy and Politics* by John Dewey (New York: H. Holt and Company) contends that German militarism is an attempt to give a practical direction to Kant's doctrine of two realms, the one outer and physical, the other inner and ideal.

Several elaborate histories of the war are in progress. In addition to Prof. Ellery C. Stowell's work on the *Diplomacy of the War of 1914* announced as forthcoming in the last issue of the REVIEW, there is *The Great War, Causes of and Motives for*, by Prof. George H. Allen, which is the first of a series of "non-partisan" volumes covering all phases of the war in Europe (Philadelphia, G. H. Barrie's Sons), together with *The Elements of the Great War*, by Hilaire Belloc (Hearst's International Library) the first two volumes of which have appeared.

The volumes on the war by "eyewitnesses" have greatly increased. Most of them are by newspaper correspondents and in many cases they sound a note of warning to the United States of the danger of unpreparedness, as in the volume *With the Russian Army* by Robert R. McCormick (New York: Macmillan Company). *What is Back of the War*, by Albert J. Beveridge (Bobbs-Merrill Company) is a study of public sentiment in the warring countries and an estimate of their resources, and owing to the author's unusual opportunities of obtaining information at first hand the volume is of particular value. *With Briton and Gaul at War*, by Frederick Palmer (Dodd Mead and Company) gives us the personal experiences of a veteran war correspondent and is at once vivid in style and restrained in its observations.

The relations of the United States to the situation in Europe are presented in a number of volumes. *The Military Unpreparedness of the*

United States, by Frederic L. Huidekoper, announced as forthcoming by the Macmillan Company will present the results of years of study by one of the foremost military experts in the United States. *Economic Aspects of the War* by Prof. Edwin J. Clapp (Yale University Press) contains a strong protest against Great Britain's infringements of our rights as a neutral power on the high seas. *The World's Highway*, by Norman Angell (G. H. Doran Company), discusses the part the United States must play in effecting the neutralization of the sea. *The United States and the Next War*, by George Lauferti (Athenaeum Press) follows the lines of Usher's *Pan-Americanism* in predicting that whichever side wins America may have to fight the victor.

Several studies of the war from the point of view of biology and the social sciences are to be found in *War and the Breed*, by David Starr Jordan (Boston: The Beacon Press), *Evolution and the War*, by P. Chalmers Mitchell (E. P. Dutton Company), *Social Progress and the Darwinian Theory*, by G. W. Nasmyth (G. P. Putnam's Sons), and *War, Science and Civilization*, by W. E. Ritter (Boston, Sherman, French and Company).

A number of collections of diplomatic documents have appeared, such as *The Protection of Neutral Rights at Sea*, by W. R. Shepherd (Sturgis and Walton) containing the diplomatic correspondence of the United States, Germany and Great Britain upon that subject, *Documents Relating to the Great War*, by Giuseppe A. Andriulli (London: T. Fisher Unwin), and the report and evidence presented by the Bryce Commission concerning the alleged German atrocities (Macmillan Company).

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Constitutional Conventions—Manner of Calling. State vs. American Sugar Refining Co. (Louisiana, May 24, 1915. 68 S. 742.) The customary manner of calling constitutional conventions in the United States is by a resolution of the legislature followed by a submission of the question to the electorate. However, in the absence of express provision or restriction in the organic law the power of calling such a convention is vested in the representatives of the people in legislative session convened. When a governor calls a legislature in extra session

for the purpose of submitting the question of calling a constitutional convention to the people, he may not limit the call for a convention to a single subject. Having authorized legislation on the subject-matter he has no further power in the premises.

Dwellings—Classification for the Purposes of Removal of Ashes. Mayor, etc., of City of Baltimore vs. Hampton Court Co. (Maryland, June 22, 1915. 94 A. 1018.) A classification of the board of estimates of a municipality for the purposes of the removal of ashes from dwellings, that houses not more than four stories in height, and not having an elevator used for delivering purposes, should be classed as dwellings, and that the commissioner should remove ashes therefrom, but that houses of more than four stories and occupied by more than one family, should be classed as apartment houses, intended to relieve the municipality from the expense of collecting ashes from larger buildings, such as hotels and apartment houses, was ultra vires, arbitrary and unreasonable, and so void.

Former Jeopardy. Curtis vs. State. (Texas, April 21, 1915. 176 S.W. 559.) Where the statute makes burglary of a residence at night a distinct offense from ordinary burglary, the fact that defendant was indicted and placed on trial for ordinary burglary, does not constitute a jeopardy so as to preclude a second indictment and trial thereon for burglary of a residence at night where the court withdrew the case from the jury upon the first trial.

Former Jeopardy. Ex parte Bornee. (West Virginia, May 28, 1915. 85 S.E. 529.) A statute which gives the State a right of appeal in prosecutions for violation of the liquor laws cannot stand, since it denies to the defendant the constitutional protection that he shall not be twice put in jeopardy for the same offense, the punishment for such violations involving imprisonment. And an amendment to the constitution giving the supreme court of appeals of a State "such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law" did not give the legislature power to alter the meaning of jeopardy in the bill of rights by providing for such appeal.

Elections—Preferential Voting. Brown vs. Smallwood. (Minnesota, August 27, 1915. 153 N.W. 953.) The preferential system of voting provided by the Duluth charter, whereby first choice, second choice

and additional choice votes are permitted, is unconstitutional. The word vote, as used in the constitution does not mean that the ballot of one elector, cast for one candidate, could be of greater or less effect than the ballot of another elector cast for another candidate. It was not intended that with four candidates one elector could vote for the candidate of his choice and another elector could vote for three candidates against him. The preferential system diminishes the right of an elector to give an effective vote for the candidate of his choice. If he votes for him once, his power to help him is exhausted. If he votes for other candidates he may harm his choice, but cannot help him. It is not a voting of man against man. (*Orpen vs. Watson*, 93 A. 843 cited to the contra.)

Highways—Use by Jitney Busses. *Ex parte Dickey.* (West Virginia, June 22, 1915. 85 S.E. 781.) All rights of common carriage on highways, such as those conducted by means of drays, omnibuses, hackney coaches and taxicabs, are legislative grants or concessions much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business. The legislature may qualify such grants by prescribing the number, character, routes, rates and hours of service of common carrying vehicles on the highways, or it may delegate such power of regulation to municipal corporations. Under such authority a municipal corporation has power to prescribe the routes and hours and rates for and impose a license tax upon jitney busses carrying passengers along its streets.

Income Tax. *United States Glue Co. vs. Town of Oak Creek.* (Wisconsin, June 16, 1915. 153 N.W. 241.) The tax imposed by the income tax law of Wisconsin upon incomes derived from transactions without the State, does not impose a burden upon business or property repugnant to the provisions of the United States Constitution conferring on congress the right to regulate interstate commerce. The tax deals only with that part of the fruits of such commerce which remains as the net proceeds after all the immediate burdens of commerce have been discharged and such net profits are merged in the assets.

Indeterminate Sentence. *Klette vs. Commonwealth.* (Kentucky, June 15, 1915. 177 S.W. 258). A verdict fixing the defendant's punishment "at not less than two years nor more than two years in the

penitentiary" is not indeterminate or for an indeterminate term within the letter or spirit of an indeterminate sentence law.

Indians—Treaty Rights; Jurisdiction of State Courts. *People vs. Becker.* (New York, May 11, 1915. 109 N.E. 116.) A treaty with an Indian tribe reserving to the members thereof the right in common with other people to take fish on territory which was ceded away by such treaty, and which does not purport to secure to such Indians exclusive and special privilege in such fishing rights, is not superior to the right of the State to enact police legislation for the preservation of fish, and does not relieve the Indians from the observance of general laws regulating the taking of fish. An Indian violating police regulations of the State may be arrested and subjected to the jurisdiction of the state courts where both the violation and arrest occur outside of a reservation.

Interstate Commerce—Federal Protection of Migratory Birds. *State vs. Sawyer.* (Maine, July 21, 1915. 94 A. 886.) The States, as sovereignties, have the exclusive right to regulate the taking of wild game, unless such right is conferred upon the federal government. The commerce clause of the United States Constitution does not warrant the act of congress, passed March 4, 1913, regulating the taking of migratory birds within the several States, the taking of such birds not being an act of "commerce." Nor is the act warranted by the general welfare clause, declaring that congress shall have power to dispose of and make all needful regulations respecting the property of the United States, for wild game is not property belonging to the federal government.

Interstate Commerce—Carmack Amendment. *Michelson vs. Judson Freight Forwarding Co.* (Illinois, June 24, 1915. 109 N.E. 281.) The Carmack amendment to the interstate commerce act, regulating the liability of any common carrier receiving property for interstate carriage, covers every detail of the subject; and there can be no doubt that congress intended by the act to take full possession of the subject of interstate shipments, and that the effect of the act was to supersede all state laws and regulations on the subject.

Intoxicating Liquors—Prohibition of Publication of Advertisements to Promote Sale. *State vs. Delaye.* (Alabama, May 13, 1915. 68 S. 993.) The anti-advertising liquor law, prohibiting the sale of newspapers and magazines containing liquor advertisements, is within the

police power of the State to regulate traffic in intoxicating liquors. Newspapers, published out of the State and sent into the State, become subject to this regulation upon the bundles being broken and the individual newspapers placed on sale.

Legislative Procedure—Legislative Journals—Reading of Bills. Heiskell vs. Knox County. (Tennessee, June 5, 1915. 177 S.W. 483.) The court will take judicial notice of the journals of the legislature, even before they are published. Such journals cannot be impeached even for fraud or mistake, the recitals therein being conclusive. If there are any errors the house itself is the only tribunal authorized to correct them. A constitutional requirement that a bill be read in each house on three separate days, is satisfied when a senate bill which has been duly passed in that house, is substituted for a house bill, the same in tenor and substance, which had already had two readings on separate days in the house and was on order of third reading.

Married Women's Enabling Act. Porlow vs. Turner. (Tennessee, July 23, 1915. 178 S.W. 766.) An act abrogating all common-law disabilities of married women, and providing that every woman, now married or hereafter to be married, shall have the same capacity to acquire, enjoy, and dispose of all property and to make any contract in reference thereto as if she were not married, is not invalid as destroying any vested rights of a husband in a marriage occurring prior to the passage of the act.

Municipal Corporations—Home Rule. People vs. Village of Pelham. (New York, June 18, 1915. 109 N.E. 513.) An act which provides for a scheme of assessment and taxation for the townships, villages and tax districts within a certain county, wherein it is provided that there shall be but one board of assessors in each town, is unconstitutional as violative of the home rule guaranty of the Constitution as depriving villages of a right of self local government by transferring the powers covered by the act to the towns in which the villages of the State are contained.

Municipal Corporations—Powers; Building Permits. People vs. Village of Oak Park. (Illinois, April 22, 1915. 109 N.E. 11.) A municipal corporation possesses and can exercise the following powers and

no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. If a doubt exists concerning the grant of power, the doubt is to be resolved against the municipality. Where the plans and specifications for a proposed building comply substantially with the provisions of a building ordinance, the municipal authorities must grant a building permit notwithstanding the failure of the commissioner of public works to give his approval to the plans.

Public Utilities—Act Requiring Street Railroads to Grant Free Transportation to Police Officers. State vs. Sutton. (New Jersey, June 14, 1915. 94 A. 788.) An act by which street railway companies are required to grant free transportation to police officers when in uniform or on duty, is a constitutional exercise by the legislature of its police power. The result of the statute is to induce the presence of the police upon street railway cars, and the police protection thus secured is within the object expressed in the language of the statute. Even if it be permissible to find that the purpose of the legislature was to save expense to the public by throwing it upon public utilities by the exaction from them of an unconstitutional tribute, the construction will be given to the statute that will sustain its constitutionality where the object expressed is in fact accomplished.

Public Utilities. State Public Utilities Commission vs. Noble Mut. Telephone Co. (Illinois, June 24, 1915. 109 N.E. 298.) A mutual telephone company, not a commercial company organized for profit, but which renders service to its members at cost, and does not hold itself out to render service to any one except members; which only makes connection with other companies upon the basis of a mutual exchange of free service; and which while connecting its members with a toll line for long distance service, collects no toll, leaving the matters of toll charges to adjustment between the members seeking such service and the toll companies, is a "public utility." A public use means public usefulness, utility, advantage or benefit. To be public the use must concern a community as distinguished from an individual or any particular number of individuals, but it is not essential that the entire community or people of the State, or any division thereof should be benefited. The use may be local or limited.

Race Segregation. *Harris vs. City of Louisville.* (Kentucky, June 18, 1915. 177 S.W. 472.) A municipal ordinance which prohibits any colored person from occupying as a place of residence or place of assembly for colored people a building in any block in which the greater part of the houses are occupied by white persons, and vice versa, but which provides that it shall not affect the location or use of such places established previous to its enactment, does not take away the right of alienation, but is merely a restriction upon alienation by taking away the probability of alienation to certain classes of purchasers, and as such, does not deprive the owners of vested rights. The fact that such an ordinance would have the effect of excluding colored people from the more desirable parts of a city does not deprive them of liberty or property without due process of law, since they can improve their sections of the city until they are equal to those of the whites. Such an ordinance is a valid exercise of the police power of a municipal legislature as a reasonable measure for the public welfare, in view of the settled public policy of the State to secure the separation of races. (*State vs. Gurry*, 121 Md. 534, 88 A. 546; *State vs. Darnell*, 166 N. C. 300, 81 S.E. 338; *Carey vs. City of Atlanta*, 84 S.E. 456, distinguished.)

Railroads—Spur Tracks. *McInnis vs. New Orleans & N. E. R. Co.* (Mississippi, May 31, 1915. 68 S. 481.) A statute which authorizes the railroad commission to require railroads to construct spur tracks so as to connect their main lines with industrial plants, without regard to the necessity therefor and without requiring any indemnity for the money expended, is unconstitutional.

Sanitary Ordinance. *City of New Orleans vs. Ricker.* (Louisiana, July 31, 1915. 69 S. 416.) A city ordinance requiring the rat-proofing of houses and other structures for the purposes of preventing and eradicating the bubonic plague, is not unconstitutional as being either confiscatory or discriminatory.

Slaves—Rights of Inheritance of Children. *Napier vs. Church.* (Tennessee, May 29, 1915. 177 S.W. 56.) Slaves could not contract and therefore were incapable of entering into relationship of a valid marriage. No civil rights could grow out of a slave union and slaves were incapable of inheriting property from each other. The slave marriage was a mere cohabitation, and subject to be absolutely terminated at the will of the master at any time. Since the war between the States,

however, various statutes have been enacted in the former slaveholding States by which, with limitations, children of these slave unions are entitled to inherit.

Statutes—Force of English Statute Enacted in 1752. Hudson vs. Flood. (Delaware, June 28, 1915. 94 A. 760.) The constitution of 1776 of Delaware provided that the common law of England, as well as so much of the statute law as should have been adopted in practice, should remain in force. A statute of 25 George II, passed in 1752, relative to attesting witnesses to a will, which provided that its provisions should extend to British colonies in America, is not in force in Delaware where there is no tangible evidence of its enactment or adoption there.

Workmen's Compensation. Jensen vs. Southern Pac. Co. (New York, July 13, 1915. 109 N.E. 500.) A workmen's compensation act, providing for a scheme for a compulsory compensating by employers of workmen injured in hazardous occupations, and which deprives employers of the defense of contributory negligence, assumed risk and negligence of a fellow servant, is a valid exercise of the State's police power and is not violative of the fourteenth amendment to the United States Constitution. This in view of the amendment to the state constitution of 1913 and of the decisions of the United States supreme court. (See Jeffry Mfg. Co. vs. Blagg, 235 U. S. 571. Ives vs. South Buffalo Ry. Co., 201 N. Y. 271, 94 N.E. 431, distinguished.) Such an act is applicable to employees engaged in interstate commerce for whom a rule of liability or method of compensation has not been provided by congress.

BOOK REVIEWS

The New American Government and its Work. By JAMES T. YOUNG. (New York: The Macmillan Company, 1915. Pp. xi, 658.)

This new book on the American government deals almost entirely with our government as it is today and the governing work which it has done in recent years, in State and nation. The work is not historical in the sense of dealing with the distant past but it is historical in its method and content in dealing with the living present. It does not deal with local government, apart from the field of state legislation. It does not consider *rural* government nor does it in any way attempt to reveal the evolution of our government from the institutions of the past. There is nothing in the volume about shires or counties or the sheriff or the posse comitatus, nothing about the town or the town-meeting, or any other of our traditional and revered governmental fountainheads and origins. It does not discuss colonial charters and their relation to state constitutions, nor does it explain the principles of the American Revolution nor the weakness and failure of the Old Confederation. It tells nothing of the making of the United States Constitution nor how the Union grew nor how the national government of today came to be what it is. The past is left on one side, except as it is incidentally drawn upon to illustrate the civic and social law and government of the generation now living.

Without presenting any historical background the author starts right in with the influence of modern business on government and with the influence of modern business on government and with a description of the real influences and actual processes by which government is conducted. He shows how in actual practice the traditional and antiquated theory of "checks and balances" and "division of governmental powers" are superseded and disregarded. The author first takes up the national government, giving a few of his briefer chapters to the character and conduct of the presidency and to the working of the senate and house. Historical illustrations are used to throw light upon present day operations and the recent changes in the personnel and conduct of our legislative bodies are analyzed and presented in a

way to point the significance in the new line-up of forces in the national political arena.

The main strength of the volume lies in its discussion of the powers of congress and of the enlarging functions and powers of government as seen in state legislation. Nine full chapters are devoted to the powers of congress. These chapters deal with taxation and finance, the regulation of commerce, the trade commission, the federal police power, the war power, congressional conservation, and national control over territories. Much of the treatment deals with the scope, constitutionality, and effect of national laws. Numerous court decisions and authorities are cited and drawn upon to support and explain the statements and conclusions that are given. The more important congressional acts touching taxation and money, railway regulation, federal control over state trade, combinations in restraint of trade, corporation taxes, holding companies and interlocking directorates, acts relating to pure food and drugs, immigration, conservation, the general police power—these and kindred lines of congressional activity receive ample attention and elucidation.

Almost an equal amount of space is given to the States and their work, in their regulation of business and in their greater activity, increasing laws, and enlarging powers, in relation to labor, education, health, police powers, charities and corrections, taxation, finance, highways, and the safe-guarding of civil rights in conflicts between individuals and corporations. Such are the subjects matter of the author's work, and his presentation of them mark him as a student not only of political science but of economics and sociology as well. Any one who is interested in social conditions and the way government is attempting to meet these conditions will find a great store of information and rich food for thought in this volume. A chapter on public opinion deals with the various organizations and agencies that help to affect opinion—civic associations, expert advice, clubs for propaganda, the Farmer's Grange, manufacturing associations, and labor movements. A full score of movements, or causes, have each its organization behind it to push its claims and demands upon the attention of public opinion and of the law making body.

The large field of party government, party organization and party usage, is very meagrely considered, in view of the large, if not preponderating, influence that party has always had, and still has, in the control of government in America. Herein is the weaker side of the volume. The author may be doubted when he asserts that the na-

tional committee in substance controls the national convention. It did so once in a notable case in recent party history, but it had not usually done so before and it is pretty certain not likely to do so again. It is questionable to speak of "the South and Southwest where there are no Republican voters," and it is quite too liberal to say that the Republican party has adopted the plan for "a representation of each State based on the Republican vote of that State" (p. 554). The new representation of four delegates at large and one from each congressional district still retains the old *federal* idea of representation based on both States and population; the party vote is not yet made the measure of power in the national convention. The unwritten law of the party, that is, old party habits are hard to change—new wine seems to have an aversion to old bottles.

In a volume treating of such a wide and varied range of topics as this volume attempts, it is usually not difficult for a reviewer to point out some errors both of omission and commission. Teachers and students who use the *New American Government* will find its index inadequate. The vice president and presidential succession appear to be dropped from the volume. Indiana readers will be disappointed to note that in the chapter on "The State and Education," the "Gary Plan," now so widely discussed, and the creditable beginning by Indiana in the promotion of vocation training so highly recognized by Professor Dewey, receive no mention from our author.

But it may seem ungracious to point out minor errors in a volume so excellent and so compact with valuable information. Professor Young's volume will be found a most useful and workable text for college and academic classes in the study of the American government and of recent experiments and policies in American legislation.

Das Internationale Landkriegsrecht Erläutert. By DR. KARL STRUPP. (Frankfurt am Main: Joseph Baer & Co., 1914. Pp. xii, 252.)

The past year has not tended to produce a judicial attitude upon current European works on the international law of war. It is easy to be biased, hard to be just. With such an admission the reviewer approaches Dr. Strupp's monograph on the *International Law of Land-warfare*. The author's scholarly reputation makes one anticipate a valuable contribution to the subject. But is such a thing possible at the present time? The main body of the text was evidently prepared

before the outbreak of the war. Some of the footnotes, however, unfortunately abound in modern instances upon which no really judicial utterances are possible. The author's remarks upon the German invasion will illustrate what is meant. "Das Belgien seinerseits einem französischen Durchmarsch keinen Widerstand entgegengesetzt hatte, ohne Rücksicht auf die ihm durch die V. Haager Konvention und durch die Verträge vom 19. April 1839 besonders auferlegte Neutralitätspflicht, steht heute fest" (p. 134, n. 1). Necessity justified Germany's action. With this doctrine all of us have become familiar. Dr. Strupp incorporates Huber's elaboration of Lueder's doctrine of *Kriegsraison*. Necessity, we learn, is of four kinds: *Staatsnotwendigkeit*, *Kriegsnotwendigkeit*, *militärische Notwendigkeit*, and *eigentliche Notstand*, each of which is fitted into a carefully graduated scale of availability.

The work is arranged as a commentary upon the various Hague conventions upon land-warfare. Each section of the conventions is expounded, illustrated, and accompanied by a wealth of incidental and textual material. But *cui bono*? What is the status of these Hague conventions? What for the past year has been their sanction? International public opinion? *Weltsittlichkeit*?

JESSE S. REEVES.

Die Geschichte der Pan-Amerikanischen Bewegung mit besonderer Berücksichtigung ihrer völkerrechtlichen Bedeutung. By DR. ROBERT BÜCHI. (Völkerrechtliche Monographien herausgegeben von Dr. Walter Schücking und Dr. Hans Wehberg. Heft 2, Breslau, 1914, J. U. Kern's Verlag. Pp. xvi, 189.)

What special qualifications the author of this work has for his task are not disclosed even after reading the book. The monograph has all the trappings of scholarship: bibliography, copious citations, labored divisions into headings, sub-headings, paragraphs and sub-paragraphs, all carefully and systematically arranged. The bibliography, however, discloses not a single title in Spanish or Portuguese, and one may assume that the author is not familiar with these languages. This complete absence of Latin-American material (save through translation) sufficiently discloses the principal limitation of the work.

After a preliminary chapter upon America and international law, in which the obvious conclusion is reached (*pace Alvarez*) that there is no special American international law, the author proceeds to the main subject. With him the phrase Pan-American movement is de-

cidedly limited: it begins with the first Pan-American conference of 1889. Such being the case, it is not surprising to find that the principal sources of information are the official proceedings of the various conferences. Each conference is described as to its organization, methods, problems, and results. There is added a discussion of the Central American conferences. In general the conclusion of the author is that in so far as such conferences have looked toward political results they have failed. "So long as the Monroe Doctrine, with its various transformations and aggressive character forms the *leit-motiv* of the policy of the United States no complete and lasting *rapprochement* between Latin and Anglo-Saxon America is to be expected (p. 194)." Nevertheless the Pan-American conferences and various private instrumentalities have, he admits, tended to dispel mutual distrust. Dr. Buchi's statements of fact seem to be exact, and his inferences cautious, but there is a mechanical quality about the work—a failure to penetrate beyond the official records—which deprives the monograph of most of its value for the American reader.

JESSE S. REEVES.

Bender's War Revenue Law 1914. By the PUBLISHER'S EDITORIAL STAFF. (Albany, N. Y.: Matthew Bender and Company, 1914. Pp. xxviii. 181.)

This volume presents the act of Congress approved October 22, 1914, commonly known as the war revenue law, or the emergency revenue act of 1914, in a setting of interesting and valuable information. There is an introductory historical sketch of the excise laws of the United States showing the relation of the present statute to preceding legislation of similar character, particularly the war revenue act of 1898 which it substantially re-enacts with certain modifications. Next comes an outline of the United States internal revenue laws in general, explaining briefly the established revenue system at the time the emergency Act of 1914 was super-added. Each section of the present statute is annotated to former statutes, departmental rulings and court decisions construing similar language in other acts. There are also a general table of statutes through which the development of the United States internal revenue system and legislation can be traced, suggestive bibliographical notes, a summary table of taxes, a table of cases, and a general index.

The present work should meet the entire satisfaction of those who require a specialized manual devoted to the subject matter with which it deals.

J. WALLACE BRYAN.

The Monroe Doctrine: National or International? By WILLIAM I. HULL. (New York: G. P. Putnam's Sons, 1915. Pp. vii, 129.)

This small volume with but some hundred and thirty words to the page is most attractively printed. The book consists of three addresses delivered respectively before the American Society for the Judicial Settlement of International Disputes, the American Society of International Law, and the Lake Mohonk Conference on International Arbitration. The addresses are reprinted as they appear in the publications of these societies with a few changes in titles and phraseology, the transposition of several pages from one address or chapter to another and the suppression of a few pages of literal repetition. Their original purpose is apparent in the book. Their style is that of the spoken rather than the written word; and there is a considerable amount of repetition. The first ten pages of both the second and third chapters are reductions of the first, serving as introductions to the later chapters.

The first paper contains a brief historical résumé of the development of the doctrine leading to the present onerous responsibilities of the United States and the accompanying interference in the affairs of our neighbors. The second states seven proposed solutions of the future of the doctrine. The third contains the author's suggestion that the doctrine be no longer considered purely national, but that it be merged in a universal guarantee of the territorial integrity of all states under the protection of The Hague Tribunal. On the whole, the book cannot be considered a weighty contribution to the voluminous literature on the subject.

ROBERT T. CRANE.

Woman's Work in Municipalities. By MARY RITTER BEARD. (New York: D. Appleton and Company, 1915. Pp. x, 337.)

It has long been hinted that woman's small place in history is due to the fact that women have not written history. So zealously has this neglect been remedied in the present instance, so amply has been recorded every item of American women's interest in the life of their cities, that much of the resulting book might obviously have been writ

less large. If somewhat long, the work is nevertheless an excellent and comprehensive picture of women's public activities.

Originally intended to be a collection of readings, the book is largely an extensive compilation of clippings and notes from newspapers, periodicals, and the records of societies. Numbers of these items are quoted, sometimes at length, though many have been digested. They refer to general social, rather than strictly political, interests, except that there is a chapter on government and administration which contains a record of campaign activities and office-holding.

Two of the avowed purposes of the book have been admirably accomplished. The first is to give a notion of the extent of women's local interests and activities. On the facts presented, it would appear to the reader that, despite the wide modern range of women's interests, they are still concentrated, as is natural and desirable, about subjects that have long lain in woman's domain—the home, and the care of the young and helpless. But their point of view has been enlarged to cover the community as well as the family. Evaluation of women's work is not attempted and is scarcely possible for the study is absolute in its treatment and does not show the comparative part of women in the enormous general increase in municipal activity and interest in recent years.

The second purpose is to indicate the spirit in which women have approached their problems. The spirit indicated is that of intolerance. It would appear that women are opposed unalterably to the segregated vice district, for example. The evil of these districts had been generally recognized by men; but the evils following their abolition have often induced men to permit their continuance. If women are as united as would appear on this question, the segregated district is doomed. And if this attitude of mind is general among women, it is a force which will inevitably profoundly modify the solution in future of many of our civic problems.

The volume appears in the municipal league series.

ROBERT T. CRANE.

Cyclopedia of American Government. Edited by ANDREW C. McLAUGHLIN AND ALBERT BUSHNELL HART. (New York and London: D. Appleton and Company, 1915. 3 volumes. Pp. xxxiv, 732; vi, 773; v, 785.)

Many cyclopedias have been heretofore published, with a wide variety of subject matter. But the work under review is in some

respects a new type. At the same time it bears enough resemblance to Lalor's well-known *Cyclopedia of Political Science, Political Economy and of the Political History of the United States* to invite comparison, as to scope, methods and substance.

The field of the new work is distinctly narrower than that of the earlier publication. While the term "government" is used in a comprehensive sense so as to include a good deal of political economy and political history, as well as political science, the historical and economic discussion is more limited. Articles on such topics as economic theory as capital, competition, consumption and credit, fully treated in Lalor's volumes, are reduced to a brief notice or omitted entirely; and in the field of applied economics, such subjects as banking, corn laws, public debt and insurance are given much less space. Even political theory receives less attention, as in such articles as those on aristocracy, democracy, despotism and political duty.

It is also to be expected that a cyclopedia of *American* government will give comparatively little attention to foreign countries and to the political institutions and problems of such countries. Thus where Lalor's work has six pages on Algeria, four on Argentine, thirteen on Austria-Hungary, three on Chili, twelve on China, nine on Denmark, twenty-four on France, thirty each on the German empire and Great Britain, and twenty on Italy, the work under review has only fifteen pages on all of these countries combined. Indeed the discussion of foreign countries is largely confined to their diplomatic relations with the United States. Some attention is given to the federal systems of Germany and Canada, but Australia and South Africa receive but brief mention. So, too, little or no space is given to such topics as academies, church and state, concordat, coups d'état, credit fancier, feudal systems, Hanseatic League and the Holy Roman empire, all of which receive extended treatment in Lalor.

With the narrower scope of the field covered, it is not surprising that the number of pages is somewhat less in the new work. Indeed it would be still smaller, were not the omissions to a large extent made up by the more intensive treatment of the more limited field. Not only are the articles on the same or similar topics entirely rewritten and expanded, with recognition of the changes of the past thirty years, but there are large numbers of articles on topics barely mentioned, or not mentioned at all, in Lalor's volumes.

Special attention may be called to some of the most important of this new material, as indicating to some extent the growth and the

changed emphasis in the scientific study of government and political problems in the United States, during the three decades since Lalor's volumes were published

Much more space is given to topics in international law, diplomacy and colonization; in constitutional law and public administration; in national, state, county and municipal government; and also to such matters as the internal organization and procedure of legislative bodies, to party organization and political methods, and to the newer governmental services for the economic and social welfare of the public.

Thus may be noted treatise articles on arbitration and peace, diplomacy and colonization, as well as several articles under the caption of international law and articles on the diplomatic relations of the United States with foreign countries.

Articles on constitutions and constitutional conventions and on due process of law and a number of the leading cases discuss the general problems of constitution making and constitutional law. Other articles deal with the suffrage and elections; with state legislatures and legislative committees; with the president, state governors, and executive and administrative organization; and with the national and state judiciary. One group of new articles includes those on the cabinet and on each of the executive departments in the United States government. Local government is treated at length, under such topics as county government, municipal government, commission government, towns and townships and local officials. There are also articles on each of the States and on a number of the larger cities.

The influence of political parties and extra-legal political methods in elections and in the actual conduct of government are also given attention, as well as the legislation in recent years to control parties and nomination methods and to prevent political corruption.

Governmental functions and activities also receive extensive notice. Public finance is treated under the heads of taxation, expenditures and debt, and a host of minor topics. Military forces are noted, rather briefly, under armies, navies, militia, etc. There are articles on police, and on the manifold regulatory functions of modern government in relation to commerce, industry and labor; and also on public works, public education, and other public undertakings for the general industrial and social welfare.

Considerable attention is given to physiographical elements and boundary questions; and personal factors in government are noted in some two hundred brief biographical articles, and by lists of the heads of executive departments in the President's cabinet.

Another characteristic of the new cyclopedia is that it is distinctly American in its authorship. In Lalor's work a large proportion of the articles were by well-known writers in the various countries of Europe. In the present work there is only one foreign contributor. About two-thirds of the nearly 250 writers are teachers by profession; and the others have had practical experience in the public service or in public affairs. Such a body of competent writers on governmental subjects could hardly have been found in this country in the early eighties. The list includes most of the well-known university instructors in political science, and a number of those in related fields. Among the more important of those who have contributed to a considerable extent there may be mentioned—in addition to the editors—Profs. Davis R. Dewey, W. W. Willoughby, James W. Garner, William A. MacDonald, G. G. Wilson, Jesse Macy, W. B. Munro, and Judge Emlin McClain.

In the method of treatment, the new work follows the practices of American cyclopedias rather than that of the *Encyclopaedia Britannica*. In place of comprehensive discussions of leading subjects, each main subject is presented in a number of different articles, with a large number of shorter notes on specific topics and terms. Few of the 300 so-called treatise articles cover more than four or five pages; while much the larger part of the 3000 topics range from a column down to a brief description in a few lines. The longer articles are usually sub-divided into sections, with sub-headings in bold faced type.

This method makes the cyclopedia of special value to those seeking for information in short compass on specific topics. For such readers, it is made more serviceable by an index containing some 15,000 references. The more serious student of important subjects is aided by the frequent use of cross references, as well as by brief bibliographical references appended to many of the articles.

The only illustrations are a considerable number of maps and charts. The maps are mainly to illustrate boundary questions and annexations of territory. The most important charts are those showing the internal organization of the executive department of the United States government.

In their general plan, the editors have shown decided originality; and in working out its details, the work gives evidence of tireless industry. Their problems were in many respects new; and it would not be difficult to urge objections to some of the results. But critics would probably disagree as much between themselves as with the editors.

The writer of this review would have preferred to combine several articles on different phases of one subject, with appropriate sub-headings; and would also wish to reduce the number of minor items, leaving the reader to consult the index for definitions and many of the briefer descriptions, which under the method followed involve considerable repetition.

More definite objection may be made to the lack of consistency in the form of titles for similar topics. Most of the articles on the judiciary are to be found under the heading courts, followed by qualifying words, such as federal, county, juvenile, etc. But the state courts are discussed under the heading judiciary, state. There is an article on constitutional conventions; but the convention which framed the Constitution of the United States is discussed under the heading federal convention; and nominating conventions are described under the caption convention, political. There is one article on co-education and another on education of women. One article deals with the cost of government; while others on the same subject, are entitled expenditures, federal and expenditures, state and local. Colonial charters are classified under the adjective; while municipal charters are described under the heading charters, municipal. More uniformity in this matter was to be expected.

To appraise the merits of the 3000 different articles would require a critical analysis of the work of the several authors, and in some cases would call for discrimination between different articles by the same author. A uniform standard of excellence could hardly be expected. Articles by such men as President Goodnow, and Profs. John Bassett Moore, Davis R. Dewey and W. W. Willoughby carry the authority of the writers; and much of the work of other and younger men is distinctly well done. But some of the writers have written a large number of articles on a wide range of topics, on which no one person could be equally well qualified.

On matters of opinion, the editors have wisely avoided trying to reconcile the views of the different authors who might discuss the same topic in different articles. Indeed the appearance at times of two or more articles by different writers on closely related branches of the same subject indicates a purpose to present varying points of view on controverted questions, which adds rather than detracts from the value of the cyclopedia.

On the whole this work will be of great value not only to the general reader, but also to students and teachers of government and to those

actively engaged in the work of government in this country. It is not likely to be replaced for many years.

JOHN A. FAIRLIE.

The Natural History of the State: An Introduction to Political Science.

By HENRY JONES FORD. (Princeton University Press, 1915. Pp. i-viii, 1-188).

This work by Professor Ford is an elaboration of the point of view presented in his paper read in 1905 before the Baltimore meeting of the American Political Science Association. This same point of view, coupled with an attack on "The Pretensions of Sociology," later brought about a lively controversy between him and three prominent sociologists.¹

The main thought of this little volume is simple enough, since it argues that the "State in its primordial form" existed as an "undivided [undifferentiated] commune," which "antedates the differentiation of Man from the antecedent animal stock." By stressing such pre-human and the later primitive human groupings, Professor Ford argues for a *social* as against an *individual* evolution, so that "the Individual is not an original but is a derivative." "Man did not make the State; the State made Man. Man is born a political being. His nature was formed by government, requires government and seeks government." From this standpoint Professor Ford thinks that there is need of a reinterpretation of political theories in respect to the state, government, and private rights.

Obviously the oddity of the argument consists in calling the pre-human "undivided commune" a form of the state. It is questionable whether other political scientists would endorse that point of view, though most would agree that the historical beginnings of the state may be traced in the rude institutions of such groups discussed, as, for example, those of the Australian blacks—presumably a comparatively modern development by contrast with a pre-human commune of the Tertiary period. According to the author's viewpoint the state came first and is all-inclusive, so that society is merely "the State viewed in its distributive aspect." The usual view, of course, is that certain aspects of social life have become differentiated or specialized into the political institution known as the state. If the author's argument is

¹See *American Journal of Sociology*, Vol. xv, 1909-1910, pp. 1-15, 96-110, 241-259, 672-680.

correctly understood, the presence of any sort of governmental organization and authority implies the existence of a state. In other words, all forms of social control are governmental, and under the "genus" state should presumably be classed such species as a family, a church, a university, or a trade union, judging from the definition of state given on page 174.

As a whole, the book may be said to be an excellent summary of the argument for a social origin of society, as against the obsolete individualism of the social contract theory, but it fails to prove that the *state* had a pre-human origin or to give a satisfactory notion of what the author means by state, government, and sovereignty.

J. Q. DEALEY.

The Formal Bases of Law. By GIORGIO DEL VECCHIO. Translated by John Lisle. Modern Legal Philosophy Series, Vol X. (Boston: The Boston Book Co., 1914. Pp. lvii, 418.)

This volume consists of translations of three distinct books by Professor del Vecchio which, however, form a fairly coherent unity.

The first of these books, *Philosophical Presuppositions of the Idea of Law*, is really an essay in epistemology in which the Kantian analysis of knowledge is applied to the idea of law. Though hostile to dogmatic or Hegelian idealism, it is mainly devoted to an attack on historicism or empiricism as a philosophy of law. The question, what is law, cannot be answered by history because history shows us only the changing content. The enduring form or essence can be grasped only a priori by pure reason. What precisely this form or essence of law is, is not clearly indicated in this book, but a sharp distinction is drawn between the form or concept and the ideal of the law. The latter deals with what the law ought to be, and is the essence of the old natural law theories, but not of a definition of what the law is.

The detailed development of the concept of law is attempted in the second book. (1) The object of law is human action, not merely as external muscular motions but as the expressions of human will. Even when not externally expressed, human action or volition is the subject of rights, e.g., the right to freedom of conscience, etc. (2) The principle of law is not force, economic or other utility, but ethical, so that there can be no real conflict between law and morality. (3) All law is imperative, (4) regulates rights, i.e., duties and claims, and (5) is necessarily coercive. Though the general principle, that law must be de-

finied by its end, is rejected, the concluding formal definition of law comes perilously near it, thus: "Law is the objective coördination of possible acts among men, according to an ethical principle which determines them and prevents their interference" (p. 218).

The metaphysical basis of this definition is developed in the third book, *The Concept of Nature and the Principle of Law*. The old natural law was not sufficiently metaphysical. It tried to evaluate law on the basis of human nature as it appeared in a [supposed] moment of time or on a basis of empirical psychology. The true basis of natural law and of the evolution of positive law is to be found in human nature "absolutely considered" (p. 317). This absolute human nature is developed, in conformity with the Kantian distinction between the phenomenal and the noumenal self, the primacy of the ego, etc. According to this view the ideal nature does not depend upon its being embodied in empirical nature, since the former is the very condition of the latter becoming an object of possible knowledge. Professor del Vecchio, however, believes in progress, i.e., that there is in the empirical world an actual constant approximation to this ideal. Hence the ideal state of nature is pictured as actual not in some remote past but rather in some remote future.

Professor del Vecchio is today one of the most distinguished European teachers of the philosophy of law. He has a thorough command of the literature of his subject, and his criticism of the regnant continental positivism is acute and penetrating. But specializing in the philosophy of law exposes one to objections from both philosophers and lawyers. It is true that the essence of law is not grasped by a purely historical treatment, but from this it does not follow that an a priori handling of the concept of law is a safe method of getting insight in this field. It is true that conceptual analysis plays a greater part in law than in almost any other science, but del Vecchio does not take account of the formidable movement of protest among jurists against the mischief of this formalism or *Begriffsjurisprudenz*. This movement deserves all the more respect because it is in line with the tendency of all modern science, including mathematics. Indeed, our author's own analysis of the concept of law shows how many things can escape the deductive net. Thus he holds it as self-evident that law must deal with will-acts, but the laws of a civilized country hold me responsible for the acts of my servant done contrary to my orders, or entitles me to inherit the goods of my uncle, though the latter's living and dying as my uncle was not due to any act of mine. According to del Vecchio's

analysis law is always determined by some ethical principle. But not only does the consciousness of mankind testify to the existence of iniquitous laws but a great deal of law, like the rule of the road, is not directly concerned with ethics at all. In the development of the law of a subject like mortgages, the jurist finds that consideration of justice will not carry him very far. Most of it depends on technical rules, the logic of analogy, etc. The real danger in the method of conceptual analysis consists in the separation of law from the context of life and treating it as if it had a separate existence. In point of fact, however, law always presupposes that people are moved by certain motives, and endeavors to control or modify these results by artificial weights or sanctions in the form of civil or criminal liability. The conceptual treatment of legal rules is thus likely to miss the fact that these rules are not substantives but adjectives of substantive social rules. The unintelligible character of law apart from the conditions of life to which it applies, is seen clearly when we study a foreign system like the Roman or Hindoo law.

The confusion between law as it is and law as it ought to be is facilitated in Europe by the fact that the word for *right* and *law* is the same (*diritto*, *droit*, *recht*). Our author is also influenced in this respect by his adherence to Kant who habitually confused existence and validity. This is seen in such expressions as "the ontologic priority of the concept," or that historical progress is a "dictate of reason" (pp. 106, 328). The question whether there has actually been more progress than degeneration is one of the weight of material evidence of fact and not to be settled by dictates of reason.¹

All of the advanced sciences are today outgrowing the juvenile fear of metaphysics, and del Vecchio renders a real service in pointing out that formal study only renders clear what otherwise we would only assume unconsciously (p. 116). This, however, does not necessitate the assumption of the whole Kantian metaphysical machinery. The principle that no human being should be treated merely as a means is, within certain limits, valuable but does not really depend on the notion of the absolute ego or freedom. The only use del Vecchio makes of this principle of absolute freedom is to condemn slavery absolutely. But this as Kohler has shown is not at all a closed question. It certainly is not when we ask what is slavery?

¹The study of history may at least save us from unfounded historical generalizations, e.g., the dogma which Del Vecchio accepts from Maine to the effect that all progress is from status to contract.

This review does not pretend to do justice to the many brilliant ideas and suggestions that fill this volume. But if books like del Vecchio's are to aid us in getting rid of the old eighteenth century natural law and finding some tenable rational criterion for the evaluation of our law, the limitation of the Kantian formalism must be emphasized.

The work of translation is of a high order, but is marred by a certain disregard for the accepted terminology of philosophy, as in the use of such terms as *methodic*, *phenomenic*, or *consequent* for *consistent*. The proof reading of foreign quotations shows a number of slips.

MORRIS RAPHAEL COHEN.

Societal Evolution. By ALBERT GALLOWAY KELLER. (New York: The Macmillan Company. Pp. ix + 338.)

Professor Keller holds that "the Darwinian factors of variation, selection, transmission and adaptation are active in the life of societies as in that of organisms." *Societal Evolution* is an argument in support of this thesis. The exposition is admitted to be tentative and the subject is so difficult that judgment as to the value of results of this treatment may well be suspended. The analogies pointed out may have and probably do have a basis in reality, but this relation does not seem to be sufficiently definite and secure to warrant positive conclusions. The present reviewer is far from regarding efforts to establish that relation as futile, but whether the line of approach pursued by Professor Keller is valid appears to be still an open question. The term "Societal Evolution" is sound and valuable because it makes clear that the subject is the evolution of society and its institutions and not of a series of individuals. The term points directly to *societas* and not merely to *socii*. The distinction is so important that the term deserves to be accepted by all those who hold that in the human species selective process acts directly on society and but indirectly on the individual as a member of society. But when Professor Keller goes on to argue that societal evolution is antagonistic to natural selection and that it may even issue in counterselection, confusion sets in. Although Darwin did not use the term he distinctly recognized societal evolution as a phase of natural selection—as, for instance, in the case of the social insects. The fact that through specialized function some members of the insect community have become unfit to fend for themselves is not evidence of conflict between societal evolution and natural selection, but merely that when natural selection as-

sumes a societal phase different standards of fitness intervene. Because a scholar is not so well fitted to extract subsistence directly from nature as an Australian Blackfellow it does not follow that the scholar's disability is evidence of counterselection. But that seems to be Professor Keller's conclusion, for he says that "the whole trend of civilization is to interpose barriers to the action of natural selection." This impresses a narrower meaning on the term than is sanctioned by Darwinism, for according to it all that civilization can do is to modify the conditions under which natural selection operates with corresponding modification of results. Natural selection continues just as gravitation continues whether one roosts in a tree top or sleeps in a bed, but the consequences if one falls out will be different.

HENRY JONES FORD.

Applied City Government. By HERMAN G. JAMES. (New York: Harper and Bros. Pp. ix + 106.)

This treatise gives practical suggestions and expository instances on the principles and practice of city charter making. The suggestions are in the main judicious but in some important features Professor James does not make sufficient allowance for effect of environment. For instance, he advocates the abolition of primary elections in municipal politics and proposes that any qualified voter who so desires be allowed to enter his name on the official ballot. He holds that this unrestricted privilege would not cause a multiplicity of candidates because such facility of nomination practically exists in England and yet candidates are few. True, but in England the expense of providing the ballot is not borne by the community but is collected from the candidates, and—more important still—nominations are made only for representative office to which no compensation is attached. All that municipal candidates can contend for is the privilege of serving the community at one's own expense. Such conditions restrict the number of candidates and such conditions would have to be reproduced in this country to secure a similar result. Professor James proposes to approximate such conditions by confining elections to the choice of unsalaried commissioners who shall elect at large for an indefinite term a mayor or city manager who shall conduct the administration. But even with such sound conditions established in municipal government, there would still be encountered the corrupting influence of county and state politics. Tammany Hall subsists more

on county offices than on strictly municipal offices, and even under a good city charter would make its pernicious activity felt. The problems of local government can not be isolated from the general organization of public authority, and until both county and state government are organized on sound principles, attempts to purify municipal government can not be more than partially successful. So far as a topical treatment of the municipal problem can go, the recommendations of Professor James are well conceived.

HENRY JONES FORD.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

Library of Congress

UNITED STATES

Commercial Laws of England, Scotland, Germany and France, by Archibald J. Wolfe . . . in collaboration with Edwin M. Borchard . . . 1915. 127 p. 8°. *Special Agents' Series No. 97. Dept. of Commerce, Bureau of Foreign and Domestic Commerce.*

Commission on Industrial Relations. Final report . . . 1915. 448 p. 8°.

Contains—Report of Basil M. Manly, director of research and investigation. Additional findings of fact, conclusions and recommendations. Report of Commissioner John B. Lennon on industrial education. Supplemental statement of Commissioners John B. Lennon and James O'Connell. Supplemental statement of Commissioner Austin B. Garretson. Supplemental statement of Chairman Frank P. Walsh. Report of Commissioners John R. Commons and Florence J. Harriman. Report of Commissioners Weinstock, Ballard and Aishton. Supplemental statement of Commissioner S. Thurston Ballard.

Report on the Colorado Strike, by Geo. P. West. 1915. 189 p. 8°.

The National Erectors' Association and the International Association of Bridge and Structural Ironworkers. By Luke Grant. 1915. 192 p. 8°.

Commission created by act of congress, August 23, 1912, "to discover the underlying causes of dissatisfaction in the industrial situation and report its conclusions thereon."

Compensation to Injured Government Employees. Regulations issued by the Secretary of Labor governing the operation of the government compensation act for employees injured in the service of the United States . . . 1915. 11 p. 8°. *Dept. of Labor, Bureau of Labor Statistics.*

Income-Tax Cases. Nos. 140, 213, 359, 393, 394, 396. In the supreme court of the United States, October term, 1915. Frank R. Brushaber, appellant, v. Union Pacific Railroad Company. Appeal from the District Court of the United States for the Southern district of New York. Also four other cases advanced for hearing with the preceding cases, . . . Brief for the United States. 1915. 116 p. 8°. *Department of Justice.*

Minimum Wage Determinations in Oregon, Effect of. 1915. 108 p. 8°. H. Doc. 1709. Bulletin 176 (Women in Industry Series No. 6). *Dept. of Labor, Bureau of Labor Statistics.*

National Marketing Organization and Rural Credits System for the United States. A hearing before the State Department, June 21, 1915. 1915. 16 p. 8°.

Prison Labor, List of References on . . . 1915. 74 p. 4°. Price 10 cts. *Library of Congress.*

Rules of Practice Before the Commission. Adopted June 17, 1915. 1915. 8 p. 4°. *Federal Trade Commission.*

Wealth, Debt, and Taxation. 1913. Vol. 1. 1915. 886 p. 4°. *Dept. of Commerce, Bureau of the Census.*

Contains: Pt. 1. Estimated valuation of national wealth; 1880-1912.

Pt. 2. National and state indebtedness and funds and investments: 1870-1913.

Pt. 3. County and municipal indebtedness: 1913, 1902, and 1890; and sinking fund assets: 1913.

Pt. 4. Taxation and revenue systems of state and local government, 1912. Pt. 5. Assessed valuation of property and amounts and rates of levy, 1880-1912.

— Vol. 2. 1915. 756 p. 4°.

Contains: Pt. 6. National and state revenue and expenditures, 1913 and 1903, and public properties of States 1913.

Pt. 7. County revenues, expenditures and public properties 1913. Pt. 8. Municipal revenues, expenditures and public properties, 1913.

ALABAMA

Legislative Investigating Committee to the Legislature of Alabama, Report of the. 1915. 58 p. 8°. (Leg. doc. No. 13.)

Note: Report on misuse of public funds, abuse of public property.

CALIFORNIA

Blue Book or State Roster, 1913-15. 1915. 620 p. 8°. *Secretary of State.*

Legislative Manual and Form Book. Prepared for the use of the California Legislature, by Clifton E. Brooks, Senate minute clerk. 1915. 198 p. 8°.

CONNECTICUT

Register and Manual, 1915. 1915. 677 p. 12°. *Secretary of State.*

DISTRICT OF COLUMBIA

Jitney Service in New Orleans, San Francisco, Kansas City, and St. Louis, with special reference to the character of the service and its regulation by public authority, investigations of the, by Conrad H. Syme. 1915. 10 sheets mimeographed. *Public Utilities Commission.*

ILLINOIS

Efficiency and Economy Committee, created under the authority of the forty-eighth General Assembly. Report of the . . . 1915. 1051 p. 8°.

Note: This report combines the separate reports described in the last issue of the Review.

IOWA

Social Legislation in Iowa, History of, by John E. Briggs. 1915. 444 p. 8°. *Historical Society.*

MASSACHUSETTS

Handbook of the Labor Laws of Mass. Labor Bulletin 104. 1915. 347 p. 8°. *Bureau of Statistics.*

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST 807

Manual for the Use of the General Court [1915]. 1915. 695 p. 16°. *General Court, Senate.*

Wages of Women in Stores in Massachusetts. Bulletin No. 6, March, 1915. 64 p. 8°. *Minimum Wage Commission.*

MINNESOTA

Efficiency and Economy Commission. Preliminary report . . . A plan for reorganizing the executive branch of the state government in Minnesota . . . [1914.] 30 p. fol.

The Legislative Manual of the State of Minnesota. . . . 1915. [1915.] 748 p. 8°. *Secretary of State.*

MISSOURI

Fire Insurance Commission. Report of findings and recommendations . . . to the Senate and House of Representatives of the forty-eighth General Assembly. [1915.] 60 p. 4°.

NEW YORK

Constitutional Convention Record. 1915. 4577 p. Nos. 1-93. 6 vols. with index. 8°.

Municipal Civil Service Commission and of the administration of the civil service law and rules of the city of New York. Report of an investigation of the. 1915. 163 p. 8°. (Senate No. 35.)

Public Service Commission, Joint Legislative Committee to investigate the. Final reports . . . 1915. 51 p. 8°. (Senate No. 69.)

——— **Minority report of above committee** . . . [1915.] 9 p. 8°.

PENNSYLVANIA

Uniform State Laws, Report of the Commissioners on, to the governor. . . 1915. 14 p. 8°. *Commissioners on Uniform State Laws.*

VIRGINIA

Legislation in Virginia, 1914. 1915. 13 p. 8°. *Legislative Reference Bureau.*

AUSTRALIA

Food Supplies and Trade and Industry During the War—correspondence between the royal commission and the minister for external affairs. 1915. 6 p. fol. *Minister for External Affairs.*

Food Supplies and Trade and Industry During the War. Reports and recommendations of the commonwealth royal commission. [1914.] 44 p. fol.

AUSTRIA

Italy on the Path of War. N.F.N.D. 22 p. 8°. *Ministry of Foreign Affairs, Violations of International Law by the Countries at War with Austria-Hungary, Collection of evidence concerning the.* Concluded on Jan. 31, 1915. Extract of the original publication. N.F.N.D. *Ministry of Foreign Affairs.*

CANADA

The National Domain in Canada and its Proper Conservation, by Frank D. Adams, Ph.D., D.Sc. 1915. 48 p. 8°. *Commission of Conservation.*

CHINA

The Chino-Japanese Negotiations. Chinese official statement with documents and treaties with annexures. Peking, 1915. 70 p. 8°. *Minister of Foreign Affairs.*

GERMANY

Belgischen Volkskriegs, Die Völkerrechtswidrige Führung. [1915.] 320 p. 8°. *Auswärtiges Amt.*

Note: Authorised American edition.

GREAT BRITAIN

Austrian and German Papers Found in Possession of Mr. James F. J. Archibald, Falmouth, August 30, 1915. 22 p. fol. Miscellaneous. No. 16 (1915). [Cd. 8012.] Price 2½d. *Foreign Office.*

Census of England and Wales 1911. Summary Tables. Area, families or separate occupiers and population; also population classified by ages, condition as to marriage, occupations, tenements, birthplaces, and infirmities. 1915. 424 p. fol. [Cd. 7929.] Price 3s. 5d. *Local Government Board, Census Office.*

Conditions Prevailing in the Coal Mining Industry Due to the War. Report of the departmental committee appointed to inquire into the. Pt. 1. Report. 1915. 54 p. fol. [Cd. 7939.] Price 5½d. *Home Office.*

—— **Minutes of Evidence.** 1915. 248 p. fol. [Cd. 8009.] Price 2s.

European War. Correspondence relating to the occupation of German Samoa by an expeditionary force from New Zealand. 1915. 14 p. fol. [Cd. 7972.] Price 2d.

Food Production in Ireland, Report of the Departmental Committee on. 1915. 21 p. fol. [Cd. 8046.] Price 3d. *Department of Agriculture and Technical Instruction for Ireland.*

Intoxicating Liquors (Restrictions in foreign countries during war). Correspondence relative to the measures taken in certain foreign countries for the restriction of the sale of intoxicating liquors since the outbreak of war. 1915. 23 p. fol. [Cd. 7965.] Price 2½d. *Foreign Office.*

"Lusitania," Loss of the Steamship. Report of a formal investigation into the circumstances attending the foundering on 7th May, 1915, of the British steamship "Lusitania," of Liverpool after being torpedoed off the Old Head of Kinsale, Ireland. 1915. 12 p. fol. [Cd. 8022.] Price 1½d.

National Relief Fund up to the 31st March, 1915, Report on the administration of the. 1915. 22 p. fol. [Cd. 7756.] Price 2½d. *Executive Committee of the National Relief Fund.*

Post Office Servants, 1912-13. First report of the committee appointed to examine the issues arising out of the report of the select committee of the House of Commons on. 1915. 14 p. fol. [Cd. 7995.] Price 2d.

Prisoners of War in England and Germany during the first eight months of the war, The treatment of. Miscellaneous No. 12 (1915.) [Cd. 7862.] 36 p. 8°. *Foreign Office.*

Prize Droits being a report to H. M. Treasury on Droits of the crown and of admiralty in time of war, by H. C. Rothery, C.B. . . . 1915. 171 p. 8°. *Admiralty Office.*

Reformatory and Industrial Schools in Scotland, Report of the departmental committee on. 1915. 111 p. fol. [Cd. 7886.] Price 1s. *Scottish Office.*

—— **Evidence taken by above committee.** 1915. 384 p. fol. [Cd. 7887.] Price 3s. 1d.

War Organization in the Distributing Trades in Scotland, Government Committee on. First report of the committee appointed by the Secretary for Scotland to consider how far, and by what means, it will be practicable to readjust the conditions of employment in the distributing trades, both wholesale and retail, in Scotland, as to release a large number of men for enlistment or other national services, with the minimum of interference with the necessary operations of those trades. 1915. 11 p. fol. [Cd. 7987.] Price 1½d.

ITALY

Comunicati Ufficiali E Disparci della Guerra. 1915. 315-360 p. *Revista Marittima*, Gingo 1915. *Ministero della Marina.*

JAPAN

Japan As It Is. Compiled by H. I. J. M.'s Commission to the Panama-Pacific International Exposition . . . Tokyo. 1915. 540 p. 8°. *Commission to the Panama-Pacific International Exposition.*

Note: Contains valuable historical and statistical data concerning the political and social life of Japan.

Population and Vital Statistics of the Japanese Empire, Diagrams and numerical tables showing growth of. Minified reproductions of exhibits at the Panama-Pacific International Exposition. 1915. 38 p. 4°. *Statistical Bureau.*

NETHERLANDS

Economische Crisis van Nederland in Oorlogsgevaar, Documenten voor. . . Eerste Serie. Augustus-December, 1914. Aflevering 1-8. *Koninklijke Bibliotheek, Afdeling Documentatie.*

Jaareijfers voor het Koninkrijk der Nederlanden-Rijk in Europa 1913 . . . 's-gravenhage. 1914. 360 p. 4°. *Bureau voor de Statistiek.*

PANAMA

Controversia de Limites entre Panama y Costa Rica. Panama. 1915. 374 p. 8°. *Secretaria de Relaciones Exteriores.*

RUSSIA

Diplomatic Documents. Negotiations covering the period from July 19-August 1 to October 19-November 1, 1914, preceding the war with Turkey.

Translation of the Russian and French Texts—Appendix: Speech of Mr. Sazonoff, Russian Minister of Foreign Affairs in the Douma of the empire, January 27 (Feb. 9) 1915. 1915. 68 p. 4°. *Ministry of Foreign Affairs.*

TASMANIA

Statistics of the State of Tasmania for the year 1913-14. 1914. 475 p. fol. *Government Statistician.*

UNION OF SOUTH AFRICA

Statistical year-book . . . No. 2. 1913-14. Pretoria. 1915. 333 p. fol. *Minister of the Interior.*

INTERNATIONAL

Bureau International de la Cour Permanente d'Arbitrage. Rapport den Conseil Administratif de la cour Permanente d' Arbitrage sur les travaux de la cour, sur le fonctionnement des services administratifs et sur les dépenses l'année 1914. Quatorzième Année. La Haye. 1915. 87 p. fol.

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

COLONIES

Books

Fourrier, H. La colonisation officielle et les concessions de terres domaniales en Algérie. Paris: Giard et Brière. 1915. Pp. 133.

Konow, Sten. Indien unter der englischen Herrschaft. Tübingen: J. C. B. Mohr. 1915. Pp. 142.

Articles in Periodicals

Imperialism. British imperialism and the ultimate problem of peace. *Walter Alison Phillips.* Edinb. Rev. July, 1915.

Imperialism. Lord Milner and British imperialism. *G. L. Beer.* Pol. Sci. Quart. June, 1915.

Italy. Italian imperialism. *T. L. Stoddard.* Forum. Sept., 1915.

Philippines. Politics or principles for the Philippines. *Payson J. Treat.* Jour. of Race Dev. July, 1915.

CONSTITUTIONAL LAW

Books

Curtis, E. N. Manual of the Sherman law. New York: Baker, Voorhis.

Fuller, H. B. Acts to regulate commerce, construed by the Supreme Court. Washington: J. Byrne & Co. 1915.

Meinecke, Friedrich. Weltbürgertum und Nationalstaat: Studien zur Genesis des deutschen Nationstaates. Dritte Auflage. Munich & Berlin: R. Oldenbourg. 1915. Pp. 528.

Spies, Heinrich. Deutschlands Feind. England und die Vorgeschichte des Weltkriegs. Berlin: Carl Heymann. 1915. Pp. 103.

White, W. Inner life of the House of Commons. London: Unwin. 1915.

Articles in Periodicals

Anti Trust Acts. The new anti-trust acts. *H. R. Seager.* Pol. Sci. Quart., Sept., 1915.

Citizenship. Common law naturalization and expatriation. *F. B. Edwards.* Jour. of Comp. Legis. July, 1915.

Citizenship. The 'ligeance of the king! a study of nationality and naturalization. *Sir Francis Piggott.* Nine. Cent. Oct., 1915.

England. The cabinet and the nation. Polit. Quart. May, 1915.

England. The flaw in British government. *H. Cuthbert Hall.* N. Am. Rev., Aug., 1915.

- England.** The new English cabinet. *Sidney Brooks*. N. Am. Rev. July, 1915.
- England.** The war and the English constitution. *Lindsay Rogers*. Forum. July, 1915.
- Federal Courts.** Jurisdiction and venue in federal courts. *John B. Sanborn*. Ill. Law. Rev. June, 1915.
- Freedom of Speech.** Criticism and national government. *D. C. Lathbury*. Nine. Cent. Aug., 1915.
- Judiciary Act of 1801.** Repeal of the judiciary act of 1801. *William S. Carpenter*. Am. Pol. Sci. Rev. Aug., 1915.
- Jury Trial.** The seventh amendment and verdicts by presumed assent of jury. Am. Bar Asso'n Jour. July 1, 1915.
- Magna Carta.** The constitutional clauses of Magna Carta. *William A. Stuart*. Va. Law Rev. May, 1915.
- Peerage.** Recent peerage cases. *J. H. Round*. Quart. Rev. July, 1915.
- Railway Rates.** Separation of interstate and intrastate accounts in federal and state regulation of rates. *Bruce Wyman*. Harv. Law. Rev. June, 1915.
- Religious Corporations.** Powers of American religious corporations. *Carl Zollmann*. Mich. Law Rev. June, 1915.
- Religious Liberty.** Religious liberty in the American law. *Carl Zollmann*. Ill. Law Rev. Oct., 1915.
- Russia.** Russia and her Emperor. *Curtis Guild*. Yale Rev. July, 1915.
- Senate.** The shackled Senate. *Charles S. Thomas*. N. Am. Rev. Sept., 1915.
- State Constitutions.** The function of a state constitution. *W. F. Dodd*. Pol. Sci. Quart. June, 1915.
- Trade Commission.** The inquisitorial feature of the federal trade commission act violates the federal constitution. *Edward S. Jouett*. Va. Law Rev. May, 1915.
- Water Rights.** Right of state to regulate distribution of water right. *O. L. Waller*. Am. Law Ref. July-Aug., 1915.

INTERNATIONAL LAW AND DIPLOMACY

Books

- Alexinsky, G.* Russia and the great war. London: Unwin. 1915.
- Alexinsky, G.* La Russie et la guerre. Paris: Armand Colin. 1915. Pp. 368.
- Andler, C.* Les usages de la guerre et la doctrine de l'état-major allemand. Paris: Alcan. 1915. Pp. 119.
- Baty, T., and Morgan, J. H.* War: its conduct and legal results. New York: Dutton. 1915.
- Borchard, E. M.* Diplomatic protection of citizens abroad; or, the law of international claims. Albany: Banks Law Pub. Co.
- Brandt, Otto.* Die deutsche Industrie im Kriege 1914-1915. Berlin: Carl Heymann. 1915. Pp. 262.
- British and colonial prize cases. London: Stevens & Sons. 1915.

- Buchi, Robert.* Die Geschichte der Pan-Amerikanischen Bewegung. Breslau: J. M. Kerris Verlag. 1914. Pp. 190.
- Cham, L.* Causes de la guerre de 1914. Paris: libr. des Publications pratiques. 1915. Pp. 110.
- Cornet, L.* 1914-1915. Histoire de la guerre. Paris: libr. des Publications pratiques. 1915. Pp. 378.
- Crozier, Alfred Owen.* Nation of nations. The way to permanent peace. A supreme constitution for the government of governments. Cincinnati: Stewart & Kidd. 1915.
- Dalloz.* Guerre de 1914. Documents officiels. Textes législatifs et réglementaires. Paris: Desfossés. 1^{er} vol., pp. 247. 2^e vol., pp. 306.
- Daudet, Leon.* Hors du joug allemand. Mesures d'après-guerre. Paris: Nouvelle Lib. Nationale. 1915. Pp. 321.
- De Sumichrast, F. C.* Americans and the Britons. London: Duckworth. 1915.
- Dumas, A.* The Prussian terror. London: S. Paul. 1915.
- Fairgrieve, J.* Geography and world power. London: Hodder & S. 1915.
- Finot, J.* Civilisés contre Allemands. Paris: Hemmerlé. 1915. Pp. 347.
- German war proclamations. London: Ellen & U. 1915.
- Guechoff, I. E.* L'alliance balkanique. Paris: Hachette. 1915. Pp. 254.
- Hall, A. B.* Outline of international law. La Salle Exten. Univ.
- Harrison, F.* The German peril. London: Unwin. 1915.
- Hill, N.* Poland and the Polish question. London: Ellen & U. 1915.
- Hobson, J. A.* Towards international government. London: Ellen & U. 1915.
- Hovelaque, E.* Les causes profondes de la guerre (Allemagne-Angleterre). Paris: Alcan. 1915. Pp. viii, 120.
- Jaffé, Edgar (Editor).* Krieg und Wirtschaft. Kriegshefte des Archivs für Socialwissenschaft und Social politik. Tübingen: J. C. B. Mohr. 1914, 1915.
- Kjellen, Rudolf.* Die Grossmächte der Gegenwart. Sechste Auflage. Leipzig & Berlin: Teubner. 1915. Pp. 208.
- Knortz, Karl.* Die Deutschfeindlichkeit Amerikas. Leipzig: Theodor Gerstenberg. 1915. Pp. 63.
- Kreigs-Notgesetze.* Sammlung der wichtigsten Gesetze, Verordnungen und Erlasse für das Reich und Preussen. Hefte. 1-5. Berlin: Carl Heymann. 1915.
- Mayer, E. F. Von.* Die völkerrechtliche Stellung Aegyptens. Breslau: J. A. Kern. 1914. Pp. 168.
- Meinecke, Friedrich.* Die deutsche Erhebung von 1914. Berlin: Cotta'schen Verlag. 1914. Pp. 100.
- Meurer, Christian.* Die völkerrechtliche Stellung der vom Feindbesetzten Gebiete. Tübingen: J. C. B. Mohr. 1915. Pp. 81.
- Meyer, Edward.* Nordamerika und Deutschland. Berlin: Karl Curtins. 1915. Pp. 116.
- Müller, Ernst.* Der Weltkrieg und das Völkerrecht. Berlin: Georg Reimer. 1915. Pp. 378.
- Ngaosiang, L.* La régime des capitulations et la reforme constitutionnelle en Chine. Cambridge: Univ. Press. 1915.

Niedner, Johannes. Der Krieg und das Völkerrecht. Jena: Gustav Fischer. 1915. Pp. 29.

Nijhoff, M. German legislation for occupied territory of Belgium. The Hague.

Okie, H. P. America and the German peril. Heinemann. 1915.

Oliver, F. S. Ordeal by battle. New York: Macmillan. 1915.

Phillipson, C. International law and the great war. London: F. Unwin. 1915.

Pohl, Heinrich. Deutsches Seekriegsrecht. Berlin: Carl Heymann. 1915. Pp. 186.

Redlich, Alexander. Der Gegensatz zwischen Österreich-Ungarn und Russland. Stuttgart & Berlin: Deutsche Verlags-Anstalt. 1915. Pp. 110.

Ritter, W. E. War, science and civilization. Sherman, French.

Rosenthal, Felix. Deutsches Kriegsrecht. Berlin: F. G. Gunther & Sohn. 1915. Pp. 79.

Schultze, Ernst. England als Seeraüberstaat. Stuttgart: Ferdinand Enke. 1915. Pp. 140.

Tedeschi, E. C. La Turchia in Guerra. Milan: Fratelli Treves. 1919. Pp. 132.

Trotter, W. F. Supplement to the law of contract during war. Hodge. 1915.

U. S. Naval War College. International law topics and discussion. Washington: Government Pr. Off.

Updyke, F. E. Diplomacy of the war of 1812. Baltimore: Johns Hopkins Press. 1915.

Watson, R. W. S. Roumania and the great war. London: Constable. 1915.

Westlake, J. Collected papers of John Westlake on public international law. New York: Putnam. 1915.

Articles in Periodicals

Alsace-Lorraine. France and Alsace-Lorraine. *A. J. Grant.* Polit. Quart. May, 1915.

Anglo-American Relations. Our relations with the United States: (1) Anglo-American tribunal. *Sir John Macdonnell.* Nine. Cent. Sept., 1915.

Anglo-German Rivalry. The future of Anglo-German rivalry. *Bertrand Russell.* Atlan. Mon. July, 1915.

Armed Neutrality. The league of armed neutrality. *Herbert Hall.* Contemp. Ref. Aug., 1915.

Aviation. Aircraft attacks. *Percy H. Winfield.* Law Mag. and Rev. May, 1915.

Aviation. Some notes on air-warfare. *C. M. Picciotto.* Jour. of Comp. Legis. July, 1915.

Balkans. The Balkan states and the Allies. *Charles Johnston.* N. Am. Rev. Sept., 1915.

Balkans. The Balkans and the war—I. Greece. *Crawford Price.* British Rev. Aug., 1915.

Balkans. A definite policy in the Balkans. *Sir Alfred Sharpe.* Nine. Cent. Sept., 1915.

- Balkans.** The future of Turkey and the Balkan states. *Sir Edwin Pears.* Atlan. Mon. July, 1915.
- Balkans.** The situation in the near East. *H. Charles Wood.* Fort Rev. Sept., 1915.
- Belgium.** Les attentats allemands contre les biens et les personnes en Belgique et en France d'après les rapports des Commissions d'enquête officielles (août 1914-mai 1915). *P. Fauchille.* Rev. Gén. d. Droit Int. Pub. Juil.-Oct., 1915.
- Belgium.** The Belgian claim to Luxembourg. *Demetrius C. Boulger.* British Rev. Sept., 1915.
- Bismarck.** La diplomatie de Bismarck et la politique de Guillaume II. *M. Caudel.* Rev. d. Sci. Pol. 15 Juin 1915.
- Budget.** The third war budget. *H. J. Jennings.* Nine. Cent. Oct., 1915.
- Caliphate.** The caliphate. *Stanley Lane-Poole.* Quart. Rev. July, 1915.
- Caliphate.** The caliphate: a historical and judicial sketch. *Ameeer Ali.* Contemp. Rev. June, 1915.
- Canada.** Canada in war-time. *Edward Porritt.* Edinb. Rev. July, 1915.
- Canada.** Canada in war-time. *O. D. Skelton.* Polit. Quart. May, 1915.
- Chamberlain.** Herr Chamberlain and the war. *J. M. Robertson.* Contemp. Rev. Sept., 1915.
- China.** Some of China's war problems. *Gilbert Reid.* Jour. of Race Dev. July, 1915.
- Compensation for Damages.** La réparation des dommages causés par les faits de guerre. Rev. d. Droit Pub. Avr.-Mai-Juin 1915.
- Compulsory Service.** Compulsory service in the United States. *George Nestler Tricoche.* Yale Rev. Oct., 1915.
- Concert of Europe.** The concert of Europe; a plain moral for today. *J. A. R. Marriott.* Nine. Cent. Oct., 1915.
- Contraband.** Contraband of war. *G. G. Phillimore.* Jour. of Comp. Legis. July, 1915.
- Contraband.** La guerre européenne et les relations commerciales des belligérants et des neutres. L'application des théories de la contrebande de guerre et du blocus. *J. Perrinjaquet.* Rev. Gén. d. Droit Int. Pub. Jan.-Juin 1915.
- Consuls.** Consular rights in relation to the estates of deceased countrymen. *Charles Cheney Hyde.* Ill. Law Rev. June, 1915.
- Cyprus.** Cyprus: its present and its future. *J. R. vanMillingen.* Contemp. Rev. Sept., 1915.
- Dardanelles.** The Dardanelles. *Walter Leaf.* Quart. Rev. July, 1915.
- Dardanelles.** The fate of the Dardanelles. *Sir Edwin Pears.* Yale Rev. July, 1915.
- Declaration of London.** The legal position of the declaration of London. *Ronald F. Roxburgh.* Jour. of Comp. Legis. July, 1915.
- Detention of Alien Enemies.** Zur Geschichte der Einsperrung feindlicher Ausländer. *George Cohn.* Zeits f. Völker. IX. Bd. 1. heft. 1915.
- Egypt.** L'Egypte et les débuts du protectorat. Rev. d. Sci. Pol. 15 Juin 1915.
- English Finance.** Britain's financial problem. *Thomas Rose.* British Rev. Aug., 1915.

Equality of States. The theory of the independence and equality of states. *Philip Marshall Brown*. *Am. Jour. of Int. Law*. Apr., 1915.

False Flag. England unter falscher Flagge. *Kirchenheim*. *Zeits. f. Völkerr.* IX. Bd. 1. heft. 1915.

Finance. 'High finance' and the danger of premature peace. *Edgar Crammond*. *Nine. Cent.* Sept., 1915.

Finland. Finland. *Arthur Reade*. *Polit. Quart.* May, 1915.

France. The war in France—XI. The mobilisation of national energy. *Paul Parsy*. *British Rev.* Aug., 1915.

Freedom of the Press. Le régime juridique de la presse en Angleterre en temps de guerre. *Gaston Jèze*. *Rev. d. Droit Pub.* Avr.-Mai-Juin 1915.

Freedom of the Seas. "The freedom of the oceans:" Germany's new policy. *Archibald Hurd*. *Fort. Rev.* Sept., 1915.

Freedom of the Seas. "The freedom of the seas." *A. Maurice Low*. *N. Am. Rev.* Sept., 1915.

Freedom of the Seas. The neutral merchant and the 'freedom of the sea.' *Francis Piggott*. *Nine. Cent.* Aug., 1915.

Geneva Convention. La convention Genève et la situation qu'elle fait aux médecins et au personnel attachés aux hôpitaux ou armées. *Georges Rocher*. *Rev. Gén. d. Droit, de la Legis. et d. la. Juris.*

German-American Relations. Ein völkerrechtlicher Streitfall zwischen Deutschland und der Vereinigten Staaten von Amerika. *R. Krauel*. *Zeits. f. Völkerr.* IX. Bd. 1. heft. 1915.

German Propaganda. Germany and the Prussian propaganda. *Wilbur C. Albert*. *Yale Rev.* July, 1915.

Germany. The true Germany. *Kuns Francke*. *Atlan. Mon.* Oct., 1915.

Hague Conventions. The adhesion of non-Christian countries to the Hague conventions of private international law. *Norman Bentwich*. *Jour. of Comp. Legis.* July, 1915.

Illyrian Confederation. La Confédération illyrienne. *Louis Leger*. *Rev. d. Sci. Pol.* 15 Août 1915.

International Associations. Les associations internationales. *A. Guillois*. *Rev. Gén. d. Droit Int. Pub.* Jan.-Juin 1915.

International Law. International law and the law of the land. *W. E. Wilkinson*. *Law Mag. and Rev.* Aug., 1915.

International Law. Das neue Völkerrecht. *Josef Kohler*. *Zeits. f. Völkerr.* IX. Bd. 1. heft. 1915.

International Law. Some questions of international law in the European war. VI. *James W. Garner*. *Am. Jour. of Int. Law*. Apr., 1915.

Ireland. Ireland and the war. *James O. Hannay*. *Nine. Cent.* Aug., 1915.

Italy. Dramatis personae of the Italian crisis. *E. J. Dillon*. *Quart. Rev.* July, 1915.

Italy. Gabriele d'Annunzio et la politique nationale en Italie. *Stéphane Piot*. *Rev. d. Sci. Pol.* 15 Août 1915.

Italy. German methods in Italy. *Albert Ball*. *Quart. Rev.* July, 1915.

Italy. Italy and the European conflict. "An Italian." *Edinb. Rev.* July, 1915.

Italy. Italy and the war. *Henry Dwight Sedgwick*. *Yale Rev.* Oct., 1915.

- Japan.** The opportunity of Japan. *Thorstein Veblen*. Jour. of Race Dev. July, 1915.
- Japan.** The reasons for Japan's demands upon China. *M. Honda*. Jour. of Race Rev. July, 1915.
- Japanese.** The Japanese in America. *George M. Rowland*. Jour. of Race Dev. July, 1915.
- Lansing.** The secretaryship of state and Mr. Lansing. *James Brown Scott*. Atlan. Mon. Oct., 1915.
- Luxembourg.** Le Grand-Duché de Luxembourg et l'invasion allemande. *G. Wampach*. Rev. d. Sci. Pol. 15 Août 1915.
- Marcy.** A great secretary of state. *J. B. Moore*. Pol. Sci. Quart. Sept., 1915.
- Marine Warfare.** Der verschärfte Seekrieg. *Paul Heilborn*. Zeits. f. Völkerr. IX. Bd. 1. heft. 1915.
- Merchant Ships—Transfer of.** The case of the "Nieuwe Vriendschap." *J. E. G. De Montmorency*. Jour. of Comp. Legis. July, 1915.
- Monroe Doctrine.** An imitation Monroe doctrine. *Gilbert Reid*. Jour. of Race Dev. July, 1915.
- Münsterbergism.** "Münsterbergism." *L. Morel*. Rev. d. Sci. Pol. 15 Juin 1915.
- Neutral Rights.** Rights of the United States as a neutral. *Charles Cheney Hyde*. Yale Rev. July, 1915.
- Neutrality.** Neutrality—a few principles. *William Jennings Bryan*. Ill. Law Rev. June, 1915.
- Neutrals.** The irresolute neutrals. *E. J. Dillon*. Contemp. Rev. July, 1915.
- Neutrals.** La situation des neutres exposée par des neutres. Rev. d. Sci. Pol. 15 Juin 1915.
- Non-resistance.** War and non-resistance. *Bertrand Russell*. Atlan. Mon. Aug., 1915.
- Pan-Americanism.** The Pan-American phantom. *Percy F. Martin*. Fort. Rev. Sept., 1915.
- Pan-Americanism.** Practical Pan-Americanism. *John Barrett*. N. Am. Rev. Sept., 1915.
- Papacy.** The Pope and the German atrocities. *J. Moyes*. Nine. Cent. Oct., 1915.
- Peace.** The Christian ideal in relations to conditions of peace. *Alfred E. Garvie*. Contemp. Rev. Aug., 1915.
- Peace.** The danger of pacifism. *Philip Marshall Brown*. N. Am. Rev. July, 1915.
- Peace League.** A league to enforce peace. *A. Lawrence Lowell*. Atlan. Mon. Sept., 1915.
- Peace.** Modern treaties of peace. *John Macdowell*. Contemp. Rev. Sept., 1915.
- Peace.** Questions for pacifists. *H. M. Chittenden*. Atlan. Mon. Aug., 1915.
- Peace.** La guerre et le problème polonais. *Th. Grostern-Gwiazdowski*. Rev. d. Sci. Pol. 15 Juin 1915.
- Poland.** The Polish question. *J. Gabrys*. British Rev. July, 1915.

Prize. An Anglo-American prize tribunal. *Simeon E. Baldwin*. *Am. Jour. of Int. Law*. Apr., 1915.

Prize. The prize cases. *Th. Baty*. *Jurid Rev.* May, 1915.

Prize. Prize law. *R. G. Marsden*. *Jour. of Comp. Legis.* July, 1915.

Protection of Economic Goods. Die internationale Union zum Schutze des gewerblichen Eigentums nach deutschem Recht während des Krieges. *Rathenau*. *Zeits. f. Völkerr.* IX. Bd. 1. heft. 1915.

Reprisals. Reprisals in warfare. *W. E. Wilkinson*. *Law Mag. and Rev.* May, 1915.

Reprisals. A Russian view of reprisals. *Alexandre Walko-M.* *Nine. Cent.* Aug., 1915.

Russian Democracy. La Russie démocratique et la guerre. *Grégoire Alexinsky*. *Rev. Pol. Int.* Mars-Avr. 1915.

Sale of Munitions. Selling arms to the Allies. *Horace White*. *N. Am. Rev.* July, 1915.

Sea Power. The function of sea power. *E. Bruce Mitford*. *British Rev.* Aug., 1915.

Serbia. The rôle of Serbia. *Crawford Price*. *British Rev.* Sept., 1915.

Serbia. Serbia and Southeastern Europe. *George Macaulay Trevelyan*. *Atlan. Mon.* July, 1915.

Serbia. The Serbo-Bulgarian situation. *A. H. E. Taylor*. *British Rev.* Sept., 1915.

Socialism. The war and international socialism. *Morris Hillgint*. *Yale Rev.* Oct., 1915.

State Control. State control of prices and production in time of war. *W. P. Layton*. *Polit. Quart.* May, 1915.

State Necessity. Die Erfordernisse des rechtmässigen Staatsaktes. *Bruno Beyer*. *Zeits. f. d. ges. Staatsw.* Erstes heft. 1915.

Submarines. Submarine piracy. *N. W. Sibley*. *Law Mag. and Rev.* Aug., 1915.

Submarines. Der Unterseebootkrieg. *Herman Rehm*. *Zeits. f. Völkerr.* IX. Bd. 1. heft. 1915.

Syria. French claims on Syria. *T. F. Farnam*. *Contemp. Rev.* Sept., 1915.

Titanic Case. International aspects of the Titanic case. *Arthue K. Kuhn*. *Am. Jour. of Int. Law*. Apr., 1915.

Trading with Enemy. International law as applied by England during the war. II. Trading with the enemy. *Norman Bentwich*. *Am. Jour. of Int. Law*. Apr., 1915.

United States. The United States and war. *Charles Vale*. *Forum*. Aug., 1915.

War. The diplomatic correspondence leading up to the war. Part I. *William Cullen Dennis*. *Am. Jour. of Int. Law*. Apr., 1915.

War. The effect of war on instalment deliveries. *Jus.* *Law Mag. and Rev.* Aug., 1915.

War. The effect of war upon the procedure of the supreme court. *H. G. Waterson*. *Jour. of Comp. Legis.* July, 1915.

War. La guerre et les faits. *L.-V. Birck*. *Rev. Pol. Int.* Mars-Avr., 1915.

- War. Honorable war. *J. William Lloyd*. Forum. Sept., 1915.
- War. The idealism of war. *James Bissett Pratt*. Forum. Oct., 1915.
- War. Labour unrest and the war. *J. H. Jones*. Polit. Quart. May, 1915.
- War. The late crisis and its causes. *A. P. Nicholson*. Contemp. Rev. July, 1915.
- War. Side-issues of the war. *Sidney Brooks*. Atlan. Mon. Sept., 1915.
- War. The war—and after. *Emile Boutroux*. Contemp. Rev. June, 1915.
- War. The war and the land. *Christopher Turnor*. British Rev. July, 1915.
- War. War and the wealth of nations. *L. P. Jocks*. Atlan. Mon. Sept., 1915.
- War Finance. Europe's war bill. *H. J. Jennings*. British Rev. Sept., 1915.
- War Literature. German war literature. *A. Shadwell*. Edinb. Rev. July, 1915.
- War and Local Administration. L'administration locale et la guerre. *Louis Rolland*. Rev. d. Droit Pub. Avr.-Mai-Juin 1915.
- War Pensions. The naval and military war pensions bill. Can it be improved? *J. M. Hogge*. Contemp. Rev. Sept., 1915.
- War and Public Law. Le Droit public en temps de guerre. *Joseph Barthélemy*. Rev. d. Droit Pub. Avr.-Mai-Juin 1915.
- War-zones. War-zones, blockade, contraband, and right of search. *John Pawley Bate*. Quart. Rev. July, 1915.
- World Mastery. The mastery of the world. *Bradley A. Fiske*. N. Am. Rev. Oct., 1915.

JURISPRUDENCE

Books

- Alexander, G. G.* Administration of justice in criminal matters (in England and Wales). New York: Putnam.
- Bartolus of Sassoferrato*. Conflict of laws. Cambridge: Harvard Univ. Press.
- Brown, W. J.* Underlying principles of modern legislation. New York: Dutton.
- Cornish, H. D.* Handbooks of Hindu law. Cambridge: Univ. Press. 1915.
- Daly, T. M.* Canadian criminal procedure. London: Sweet & M. 1915.
- Derumaux, M.* Etude historique sur l'extraterritorialité de la loi pénale. Paris: Rousseau. 1915. Pp. 186.
- Irvine, L. H.* By right of sword; a defense of capital punishment. New York: Baker & Taylor. 1915.
- Jhering, R. v.* Struggle for law. Callaghan. 1915.
- Kocourek, A., and Wigmore, J. H.* Sources of ancient and primitive law. Boston: Little, Brown. 1915.

Articles in Periodicals

- Bertillon System.** The passing of the Bertillon system of identification. *Raymond B. Fosdick*. Jour. of Crim. Law and Crim. Sept., 1915.
- British Bar.** The organisation of the bar in the British Empire. *Holford Knight*. Jour. of Comp. Legis. July, 1915.

Chinese Law. A bibliographical introduction to the study of Chinese law. *Charles Sumner Lobingier.* Jour. of Comp. Legis. July, 1915.

Clinical Research. Material of clinical research in the field of criminology. *David C. Peyton.* Jour. of Crim. Law and Crim. July, 1915.

Community Property. The beginnings of the community property system and the adoption of the common law. *Orrin K. McMurray.* Calif. Law Rev. July, 1915.

Courts. The early courts of Cook County. *Orrin N. Carter.* Ill. Law Rev. June, 1915.

Crime. Findings and recommendations of the Chicago council committee on crime. *Charles E. Merriam.* Jour. of Crim. Law and Crim. Sept., 1915.

Criminal Code. The criminal codes of Connecticut. *Lawrence Henry Gibson.* Jour. of Crim. Law and Crim. July, 1915.

Criminal Code. The criminal codes of Pennsylvania. *Lawrence Henry Gibson.* Jour. of Crim. Law and Crim. Sept., 1915.

Delinquency. Questionnaire on delinquency in youths and adults and its treatment by the courts. *Leon A. Carley.* Jour. of Crim. Law and Crim. Sept., 1915.

Duel. The duel in early upper Canada. *William Renwick Riddell.* Jour. of Crim. Law and Crim. July, 1915.

Employers' Liability. The national employers' liability act. *Jacob Trieber.* Am. Law Rev. July-Aug., 1915.

Female Offenders. One hundred female offenders. *Clinton P. McCord.* Jour. of Crim. Law and Crim. Sept., 1915.

Habitual Criminals. Habitual criminals and Scottish convictions. *Arnold D. McNair.* Law Mag. and Rev. Aug., 1915.

Jails. Jails, lockups and police stations. *John L. Whitman.* Jour. of Crim. Law and Crim. July, 1915.

Judicial Administration. The problem of reforming judicial administration in America. *Henry Upson Sims.* Va. Law Rev. Oct., 1915.

Judicial Organization. Court organization for a metropolitan district. *Herbert Harley.* Am. Pol. Sci. Rev. Aug., 1915.

Judicial Procedure. Procedural reform. *Robert McMurdy.* Mich. Law Rev. June, 1915.

Judicial Procedure. Regulation of judicial procedure by rules of court. *Roscoe Pound.* Ill. Law Rev. Oct., 1915.

Judicial Procedure. Rule-making in the courts of the Empire. *Samuel Rosenbaum.* Jour. of Comp. Legis. July, 1915.

Judicial Statistics. Judicial statistics, England and Wales, 1913. *Law Mag. and Rev.* May, 1915.

Justice. Justice, commercial morality, and the federal supreme court: the Waterman pen case. *John H. Wigmore.* Ill. Law Rev. Oct., 1915.

Land Registration. The progress of registration of title. *James Edward Hogg.* Jurid. Rev. May, 1915.

Law. Law, police, and social problems. *Newton D. Baker.* Atlan. Mon. July, 1915.

Legal Conceptions. Changing conceptions of law and of legal institutions. *Orrin K. McMurray.* Calif. Law Rev. Sept., 1915.

- Legal Education.** Education for the bar in the United States. *Simeon E. Baldwin.* *Am. Pol. Sci. Rev.* Aug., 1915.
- Legislation.** The bicameral system in state legislation. *James D. Barnett.* *Am. Pol. Sci. Rev.* Aug., 1915.
- Legislative Reference.** An imperial legislative reference bureau. *C. E. A. Bedwell.* *Jour. of Comp. Legis.* July, 1915.
- Mental Tests.** Mental tests and practical judgments. *Leon A. Carley.* *Jour. of Crim. Law and Crim.* July, 1915.
- New Jersey Practice Act.** The New Jersey practice act of 1912. *Charles H. Hartshorne.* *Va. Law Rev.* Oct., 1915.
- Penal Administration.** Charitable and penal administration. *James W. Garner.* *Jour. of Crim. Law and Crim.* July, 1915.
- Public Defender.** On the public defender—a symposium. *Ferrari, Forster, Adelman, and Stolper.* *Jour. of Crim. Law and Crim.* Sept., 1915.
- Punishment.** The function of punishment. *G. P. Garrett.* *Jour. of Crim. Law and Crim.* Sept., 1915.
- Recall.** An eighteenth century recall of judges. *Calif. Law Rev.* July, 1915.
- Uniform Legislation.** The uniform partnership act—a criticism. *Judson A. Crane.* *Harv. Law Rev.* June, 1915.
- West Africa.** Native law and procedure in British West Africa. *A. J. N. Tremearne.* *Jour. of Comp. Legis.* July, 1915.
- Woman's Work.** Women's work in the courts in the United States. *Mrs. Herbert Musgrave.* *Jour. of Comp. Legis.* July, 1915.

MUNICIPAL GOVERNMENT

Books

- Koester, F.* Modern city planning and maintenance. New York: McBride, Nast. 1915.
- Munro, W. B.* Bibliography of municipal government. Cambridge: Harvard Univ. Press.

Articles in Periodicals.

- Belgium.** Municipal resistance in Belgium. *Pierre Maes.* *British Rev.* Aug., 1915.
- City Manager.** City manager plan in Ohio. *L. D. Upson.* *Am. Pol. Sci. Rev.* Aug., 1915.
- City Manager.** How the commission-manager plan is getting along. *Richard S. Childs.* *Nat. Munic. Rev.* July, 1915.
- City Manager.** Some reflections on the city manager plan of government. *Herman G. James.* *Am. Pol. Sci. Rev.* Aug., 1915.
- City Planning.** Recent city plan reports. *Charles Mulford Robinson.* *Nat. Munic. Rev.* July, 1915.
- City Revenue.** New sources of city revenue. *Robert Murray Haig.* *Nat. Munic. Rev.* Oct., 1915.
- Dance Halls.** Municipal dance halls. *Frederick Rex.* *Nat. Munic. Rev.* July, 1915.

Employment Bureaus. Municipal employment bureaus in the United States. *Margaret Nash.* Nat. Munic. Rev. July, 1915.

Free Cities. Metropolitan free cities. *Robert C. Brooks.* Pol. Sci. Quart. June, 1915.

German Cities. German cities under pressure of war. *Robert C. Brooks.* Nat. Munic. Rev. Oct., 1915.

Graft. Graft prosecutions: 1914-1915. *Alice M. Holden.* Nat. Munic. Rev. Oct., 1915.

Jitney. The jitney bus and its future. *William J. Locke.* Nat. Munic. Rev. Oct., 1915.

Municipal Home Rule. Home rule for American cities. *Henry H. Curran.* Yale Rev. July, 1915.

Parks. Recent park reports. *F. L. Mulford.* Nat. Munic. Rev. July, 1915.

Recreation. Municipal recreation. *Rowland Haynes.* Nat. Munic. Rev. July, 1915.

Street Urchins. The home of the street urchin. *Bernard J. Newman.* Nat. Munic. Rev. Oct., 1915.

Unemployment. Unemployment in American cities. *Frances A. Kellor.* Nat. Munic. Rev. July, 1915.

MISCELLANEOUS

Books

Benoist, C. Le Machiavélisme de l'antimachiavel. Paris: Plon-Nourrit et Cie. 1915. Pp. 160.

Boisseau de Mellanville, P. La centralisation de l'état civil. Troyes: Gustave Frémont. 1915. Pp. 115.

Burns, C. D. Political ideals. New York: Oxford Univ.

Christensen, A. Politics and crowd-morality. Williams & N. 1915.

Crosby, J. S. Orthocratic state. New York: Sturgis & Walton.

Dewey, J. German philosophy and politics. New York: Holt.

Flandin, E. L'Allemagne en 1914. Paris: H. Le Soudier. 1915. Pp. 457.

Flandin, E. Institutions politiques de l'Europe contemporaine. Paris: H. Le Soudier. 1914. Pp. vii, 368.

Grandvilliers, J. de. Essai sur le libéralisme allemand. Paris: Giard et Brière. 1914. Pp. 377.

Guilland, A. Modern Germany and her historians. London: Jarrold. 1915.

Hammond, B. E. Bodies politic and their governments. New York: Putnam. 1915.

Hill, J. D. People's government. New York: Appleton.

Innes, A. D. The Hohenzollerns. Dodge Pub. Co.

Lagarde, A. Latin church of the Middle Ages. T. & T. Clark. 1915.

Ludovici, A. M. Defence of aristocracy. London: Constable, 1915.

Pirenne, H. Belgian democracy: its early history. New York: Longmans. 1915.

Saxe, J. G. Handbook of the New York laws relating to elections. J. B. Lyon Co. 1915.

Schmitz, Oscar A. H. Das wirkliche Deutschland. Vierte Auflage. Munich: George Müller. 1915. Pp. 380.

Smith, J. W. Training for citizenship. New York: Longmans.

Articles in Periodicals

Canada. Canadian government annuities. *F. A. Carman.* Pol. Sci. Quart. Sept., 1915.

Counties. The commission of lieutenancy in the counties: its history and functions. *Hugh H. L. Bellot.* Law Mag. and Rev. Aug., 1915.

Democracy. Business and democracy. *J. Lawrence Laughlin.* Atlan. Mon. July, 1915.

Democracy. Can democracy be organized? *H. C. O'Neill.* British Rev. Aug., 1915.

Democracy. The union of democratic control. *E. D. Morel.* Contemp. Rev. July, 1915.

Direct Legislation. Direct legislation in Washington. *L. B. Shippee.* Pol. Sci. Quart. June, 1915.

England. England. *Houston Stewart Chamberlain.* N. Am. Rev. July, 1915.

German Theories. German theories of the state. *G. P. Gooch.* Contemp. Rev. June, 1915.

German Theories. The German way of thinking. *Simon Nelson Patten.* Forum. July, 1915.

Government. The government of tomorrow. *Harry Allen Overstreet.* Forum. July, 1915.

Justice. The question of justice. *John Crowe Ransom.* Yale Rev. July, 1915.

Liberia. Political and economic factors in Liberian development. *George W. Ellis.* Jour. of Race Dev. July, 1915.

Negro Vote. The South and the negro vote. *James C. Hemphill.* N. Am. Rev. Aug., 1915.

New York. New York provincial politics. *C. W. Spencer.* Pol. Sci. Quart. Sept., 1915.

Political Theory. Su una recente concezione del fine dello Sato. *Antonio Ferracciu.* Riv. d. Dir. Pub. No. 3, 1915.

Post Office. The post office and socialism. *Henry A. Castle.* N. Am. Rev. July, 1915.

Presidential Primary. The presidential preference primary. *Francis W. Dickey.* Am. Pol. Sci. Rev. Aug., 1915.

Public Services. The crisis in public service regulation in New York. *Delos F. Wilcox.* Nat. Munic. Rev. Oct., 1915.

Public Services. Valuation of public service properties. *John Bauer.* Pol. Sci. Quart. June, 1915.

Railway Rates. Railway rate theory and practice. *E. R. Dewsnup.* Pol. Sci. Quart. Sept., 1915.

Railways. Evolution in railroad administration. *Robert J. Cary.* Ill. Law Rev. June, 1915.

Scientific Management. Scientific management of the public business. *Morris L. Cook*. Am. Pol. Sci. Rev. Aug., 1915.

State Control. The coming slavery. [Reprinted with comments by *Henry Cabot Lodge*.] *Herbert Spencer*. Forum. Oct., 1915.

State Control. The state v. the man in America. *Truxton Beale*. Forum. Aug., 1915.

Toryism. The new toryism. [Reprinted with comments by *Elihu Root*.] *Herbert Spencer*. Forum. Sept., 1915.

Woman Suffrage. Are women a force for good government? *Edith Abbott*. Nat. Munic. Rev. July, 1915.

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